Appeal Decisions

Planning Appeals Commission

4th Floor
92 Ann Street
BELFAST
BT1 3HH
T: 028 9024 4710
E: info@pacni.gov.uk

Appeal Reference:	2022/A0139 (Appeal 1)
Appeal by:	Mr. Richard Harkness
Appeal against:	The refusal of outline planning permission
Proposed Development:	Site for dwelling and garage and associated ancillary works
Location:	50m NW of 28A Crosshill Road, Crumlin
Planning Authority:	Antrim and Newtownabbey Borough Council
Application Reference:	LA03/2022/0220/O
Procedure:	Written representations and Commissioner's site visit on 4th April 2024
Decision by:	Commissioner Gareth Kerr, dated 9th April 2024

Appeal Reference:	2022/A0140 (Appeal 2)
Appeal by:	Mr. Richard Harkness
Appeal against:	The refusal of outline planning permission
Proposed Development:	Site for dwelling and garage and associated ancillary works
Location:	30m SE of 28E Crosshill Road, Crumlin
Planning Authority:	Antrim and Newtownabbey Borough Council
Application Reference:	LA03/2022/0221/O
Procedure:	Written representations and Commissioner's site visit on 4th April 2024
Decision by:	Commissioner Gareth Kerr, dated 9th April 2024

Decisions

1. Appeal 1 is dismissed.

2. Appeal 2 is dismissed.

Preliminary Matter

3. Under Section 59 (1) of the Planning Act (Northern Ireland) 2011 (the Act), a party to the proceedings is not to raise any matter which was not before the Council at the time the decision appealed against was made unless that party can demonstrate that the matter could not have been raised before that time, or that its not being raised before that time was a consequence of exceptional circumstances. However, Section 59 (2) goes on to state that nothing in subsection (1) affects any requirement or entitlement to have regard to the provisions of the local development plan (LDP) or any other material consideration.

4. The Council's second refusal reason in both appeals states that insufficient information was provided in order to determine that the proposed development will not have a detrimental impact on human health or on the water environment resultant from contamination risks associated with the sites (sic) historic land use. As the Council also had other concerns, it did not wish to put the appellant to the expense of addressing this concern, however, the appellant did so voluntarily and submitted a Phase 1 Preliminary Risk Assessment (PRA) Report for consideration. Following consultation with the Council's Environmental Health Section, a small omission in the report was identified (a car mechanic's business approximately 60 metres north of the appeal sites had not been considered). The Council then decided to refuse both applications on 19th July 2022. However, it did not issue the decisions until 25th July 2022. During the intervening week, the appellant submitted an amended PRA Report on 21st July.

5. The Council argued that the revised PRA was submitted after it had determined the applications and issued the decisions. It believed that raising this information at appeal stage was contrary to Section 59 of the Act. I am not persuaded that this is the case for the following reasons:
   - The Council was wrong to state that the information was received after its decisions had been issued. It was received four days before the decisions were sent out. Due to the delay between the Council deciding to refuse the applications and the issue of the decision notices, the appellant should not be disadvantaged for trying to address the refusal reasons before he had received notice of the Council's decisions.
   - While some new information was provided in the revised PRA report, it did not concern a new matter for the purposes of Section 59. The matter of land contamination was already under consideration and the specific car mechanic's business had been raised by the Council. The changes to the report were minimal and they did not alter its conclusions.
   - As the matter was already before the parties as a material consideration and was the subject of a refusal reason, the appellant is entitled to address the Council's concerns in the appeals. Should it have wished to do so, the Council had the opportunity to comment on the revised PRA report through the exchange of evidence in the appeals, so no prejudice arises.

   Accordingly, the revised PRA report is admissible in the appeals and Section 59 is not engaged.

Reasons

6. The main issues in these appeals are whether the proposed developments are acceptable in principle in the countryside, whether they would integrate into the landscape and whether they would harm human health or the water environment due to land contamination.

7. 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. The Antrim Area Plan 1984 – 2001 (AAP) acts as the LDP for this area as Antrim and Newtownabbey Borough Council has not yet adopted a plan strategy for the district as a whole. The sites are in the

countryside outside of any settlement limit, green belt or rural policy area defined in the plan. As the rural policies in the LDP are now outdated, having been overtaken by a succession of regional policies for rural development, no determining weight can be attached to them.

8. Regional planning policies of relevance to these appeals are set out in the Strategic Planning Policy Statement for Northern Ireland (SPPS) and other retained policies within Planning Policy Statement 21 – Sustainable Development in the Countryside (PPS 21). There is no conflict between the provisions of the SPPS and the retained policies on the issues raised in these appeals.

9. Policy CTY1 of PPS 21 sets out the types of development which are considered to be acceptable in principle in the countryside. It states that planning permission will be granted for an individual dwelling house in six specified cases. One is the development of a small gap site within an otherwise substantial and continuously built up frontage in accordance with Policy CTY8.

10. Policy CTY8 is entitled 'Ribbon Development' and it states that planning permission will be refused for a building which creates or adds to a ribbon of development. However, the policy permits as an exception the development of a small gap site sufficient only to accommodate a maximum of two houses within an otherwise substantial and continuously built up frontage 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. It is not disputed that the two appeal sites constitute a small gap in an otherwise substantial and continuously built up frontage and that the proposals would respect the existing development pattern. The matter of contention in these appeals concerns whether the sites would comply with other planning and environmental requirements, specifically in relation to integration.

11. Paragraph 6.70 of the SPPS requires that all development in the countryside must integrate into its setting. Policy CTY13 of PPS 21 relates to integration and design of buildings in the countryside. It states that planning permission will be granted for a building in the countryside where it can be visually integrated into the surrounding landscape and it is of an appropriate design. It then sets out seven criteria that would render a new building unacceptable, one of which is disputed in these appeals, namely, (b) where the site lacks long-established natural boundaries or is unable to provide a suitable degree of enclosure for the building to integrate into the landscape.

12. The appeal sites are located along the road frontage of a larger agricultural field. They lie between a new dwelling at No. 28E Crosshill Road (in what would have been the northern corner of the field) and a laneway leading to a new dwelling under construction at No. 28B to the rear. Beyond the laneway is an agricultural access and then a dwelling at No. 28A. There is a wide roadside verge and the northeastern (roadside) boundary of both appeal sites is defined by a post and wire fence along which a new hedge has recently been planted. The hedge is approximately 0.25m in height. Apart from this new hedge, there are no established natural boundaries to either appeal site. Each has a post and wire fence to one other boundary. The land slopes gently from southeast to northwest. The surrounding rural area is quite heavily developed with residential properties and there are also several agricultural

buildings and business premises including a sawmill, a haulage yard and two car mechanics. There is a stand of pine trees to the south of No. 28B. There are views across the appeal sites towards Lough Neagh to the west.

13. The Council described the appeal sites as an open gap between dwellings with no existing established boundary treatments other than a post and wire fence. They said the sites are open and exposed when viewed from a 115-metre stretch of the Crosshill Road. They stated that the neighbouring buildings would not provide any sense of backdrop or enclosure for the site and the stand of trees would not provide sufficient backdrop given its distance from the site. The appellant contended that the existing built form and associated boundary treatments restricts views to those across the site frontage and the sites would only require planting along the roadside fence to ensure integration.

14. I consider that the recently planted roadside hedge does not constitute a long-established natural boundary for the purposes of the policy. In any case, it is so low that it would be many years before it may provide any degree of enclosure for the four proposed buildings and criterion (c) of Policy CTY13 rules out primary reliance on new landscaping for integration. The use of the word “or” in criterion (b) of the policy indicates that development proposals may be found acceptable in the absence of long-established natural boundaries if they can otherwise provide a suitable degree of enclosure for the building to integrate into the landscape. Other landscape features or topography or existing buildings could therefore contribute to the enclosure of a site.

15. When one approaches the appeal sites on the Crosshill Road from the southeast, the straight downhill section of road with wide verges affords clear views across the sites. As the land falls away behind the sites, there is little by way of backdrop or landscape features to mitigate the absence of established natural boundaries to the sites themselves. Approaching the sites uphill from the northeast, the clear views of the proposed developments would be magnified by the absence of vegetative screening to most of the boundaries of No. 28E. Most existing dwellings in the area have some form of existing screening to one or more boundaries, such as the conifer hedge to the northwest of No. 28E which limits views from further to the north on Crosshill Road. However, the lack of any established natural boundaries to the remainder of the curtilage of No. 28E, both appeal sites and the laneway leading to No. 28B leaves a large open gap which would be unable to provide a suitable degree of enclosure for the four proposed buildings to integrate into the landscape. The pine trees to the south are at such distance that they do not aid integration from this viewpoint. The siting of the neighbouring buildings in relation to the notional siting indicated for the appeal proposals means that the existing buildings would not restrict views of the developments to any meaningful extent. I conclude that the appeal proposals would fail to satisfy criterion (b) of Policy CTY13.

16. During the course of the planning applications, the appellant provided aerial photographs of several other examples of double infill sites approved by the Council. I was not provided with any additional details relating to these planning decisions, or evidence of their level of enclosure from critical viewpoints, but from the limited information available, they each appear to have some established natural boundaries whereas the appeal sites have none. Therefore, I am not persuaded that they are directly comparable with the appeal proposals. In any case, integration and

enclosure are matters which are specific to individual sites and each case must be judged on its own merits. The examples given do not demonstrate a level of inconsistency in decision making that would overcome the policy objections to the proposal. The Council's concerns regarding the lack of integration of the appeal sites are upheld. As the proposals would not meet one of the other planning and environmental requirements for development in the countryside, they also fail to meet the exception in Policy CTY8 for infill development. The proposals would instead add to ribbon development. The Council has sustained its first reason for refusal in both appeals.

17. The Council's second reason for refusal in both appeals relates to potential land contamination. The Council raised concern that the assessment methodology referred to in the PRA (CLR 11) was no longer in use. However, the current recommended Land Contamination Risk Management (LCRM) guidance is referred to in the revised PRA. It must be noted at the outset that neither site has been previously developed and therefore any residual contamination risk would be from off-site sources.

18. The revised PRA notes potential off-site sources of contamination including a commercial sawmill and a landfill within a quarry to the south and a car mechanics to the north. Given the topography of the sites in relation to these uses, the low vulnerability of groundwater in this location, the absence of any surface watercourses and the geological conditions (boulder clay with no obvious superficial aquifer), it found that there was a low risk to the development sites and that there was no significant risk to human health or the environment.

19. I am satisfied that sufficient risk assessment has been carried out to enable a robust assessment of the proposals and that if approved, and new contamination was then identified during development, any risk could be mitigated by the imposition of planning conditions requiring investigation and remediation of the contamination in accordance with the LCRM guidelines. As the revised PRA is sufficiently comprehensive in respect of any risks to human health or the environment, the Council's second refusal reason in both appeals is not sustained.

20. As the Council's first reason for refusal in both appeals has been sustained and is determining, the appeals must fail.

These decisions are based on the following drawings which were received by the Council on 8th March 2022:

2022/A0139 (Appeal 1)
No. 01 Site Location Map at 1:1250

2022/A0140 (Appeal 2)
No. 01 Site Location Map at 1:1250

COMMISSIONER GARETH KERR

List of Documents

Planning Authority:-	A	Statement of Case for 2022/A0139 Antrim and Newtownabbey Borough Council
	B	Statement of Case for 2022/A0140 Antrim and Newtownabbey Borough Council
	C	Rebuttal Comments for 2022/A0139 Antrim and Newtownabbey Borough Council
	D	Rebuttal Comments for 2022/A0140 Antrim and Newtownabbey Borough Council
Appellant:-	E	Statement of Case for 2022/A0139 & 2022/A0140 including revised Phase 1 Preliminary Risk Assessment Report Planning Services
	F	Rebuttal Comments for 2022/A0139 & 2022/A0140 Planning Services