
Appeal Reference:	2022/A0176
Appeal by:	Mr Colin Knox (James Knox and Sons Ltd)
Appeal against:	The refusal of full planning permission
Proposed Development:	Retrospective change of use from private garden to an extension of an existing builders yard with a new 2.55m high boundary wall and concrete surface
Location:	Lands to the rear of No. 48 Newcastle Street, Kilkeel
Planning Authority:	Newry, Mourne and Down District Council
Application Reference:	LA01/2021/2027/F
Procedure:	Hearing on 7 September 2023
Decision by:	Commissioner Stevenson, dated 28 August 2024

Decision

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

Claim for Costs

2. A claim for costs was made by the appellant against the Council. This claim is the subject of a separate decision.

Reasons

3. The main issues in this appeal are whether the appeal development would:
 - be incompatible with surrounding land uses;
 - harm the amenity of residents; and
 - harm the Mourne Area of Outstanding Natural Beauty (AONB).
4. The Planning Act (NI) 2011 (“the Act”) requires the Commission to have regard to the Local Development Plan (LDP), so far as material to the application, and to any other material considerations. Where in making any determination, regard is to be had to the LDP, Section 6(4) of the Act states that 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) is the relevant LDP for the area wherein the appeal site is located. The appeal site is on unzoned land adjacent to the town centre and within the settlement limit of Kilkeel. The appeal

site is within the Mourne Area of Outstanding Natural Beauty (AONB) and abuts Beylagh House Local Landscape Policy Area (LLPA). The LDP indicates that the features that contribute to the environmental quality, integrity or character of the Beylagh House LLPA is the large house and gardens and that it is important in the local landscape. Policy CVN3 of the BNMAP states that where proposals are within and/or adjoining a designated LLPA, a landscape buffer may be required to protect the environmental quality of the LLPA. The plan contains no other designations or policies that are material to the appeal development. I will return to the LDP later in this decision.

6. Material to all decisions on individual planning applications and appeals is the Strategic Planning Policy Statement for Northern Ireland 'Planning for Sustainable Development' (SPPS). It sets out the transitional arrangements that will operate in the absence of an adopted Plan Strategy. Under those arrangements, certain Planning Policy Statements (PPSs) are retained that are pertinent to this appeal, namely Planning Policy Statement 4 'Planning and Economic Development' (PPS4) and Planning Policy Statement 2 'Natural Heritage' (PPS2). There is no conflict or change in policy direction between those retained policies and the SPPS. PPS4 and PPS2 therefore provide the policy context for assessing the appeal development.
7. The appellant seeks retrospective permission for the change in use from a private garden to extend an existing builders' yard. The extended yard area was previously part of the rear garden of No. 48. It is enclosed by a boundary wall, approximately 2.5 metres high. There are high level metal framed open shelves sited around the periphery of the extended yard area and during my site visit, these were filled with builders' materials which exceeded the height of the boundary wall. Immediately surrounding the appeal site to its side and rear are large, detached dwellings with substantial rear gardens.
8. The third parties contend that an adjacent dwelling (No. 42) to the appeal site is significant as it is part of the historic heritage of Kilkeel. However, no further detail is provided on its history for example and there is no indication in the evidence that it is a listed building. On the opposite side of Rooney Road, there are commercial properties that fall within the town centre. Beylagh House, Kilkeel Concrete and Kilkeel Waste Water Treatment Works (WWTW) lie to the southeast of the site.
9. The original concrete builders yard is south-west of the appeal site, and it fronts onto Rooney Road. The appellant indicates that the sheds therein hold building materials for onward sale to the construction industry mainly. He alleges that the original builders' yard and sheds are lawful, and he provided dated aerial imagery to illustrate their vintage. There is no planning permission for the original builders' yard nor is there a Certificate of Lawfulness of Existing Use or Development (CLEUD). However, the Council accepts that the original yard and the three sheds have been in-situ for more than five years, thus accepting their lawfulness despite the absence of any CLEUD. This matter is undisputed in this appeal. Moreover, the Council accepts the validity of the description of the appeal development. Accordingly, in the evidential context, I find that, in principle, the appeal development, which is an extension on unzoned land to a use not contested is

acceptable subject to consideration of the matters raised below. Furthermore, it was undisputed that a builders' yard is a 'sui generis' land use.

10. PPS4 sets out planning policies for economic development uses. In its preamble, the policy defines economic development uses as Class B1, B2, B3 and B4 uses. The preamble expands to say that "with the exception of a limited number of specific policy references, mainly relating to acceptable alternative uses, this PPS does not provide policy for retail uses, financial, professional and other services, leisure or tourism, agriculture, waste disposal or waste management facilities, or minerals extraction, which are dealt with in other PPSs or in 'A Planning Strategy for Rural Northern Ireland.'" However, it goes on to say that the policy approach and associated guidance contained within this document may be useful in assessing proposals for other sui generis employment uses. Paragraph 5.31 of PPS4 infers that a builders' supplies merchant is a sui generis employment use.
11. Policy PED1 'Economic Development in Settlements' of PPS4 states that a development proposal to extend an existing economic development use or premises within settlements will be determined on its individual merits having regard to Policy PED9. That policy indicates that a proposal for economic development use, in addition to the other policy provisions in the PPS, will be required to meet certain criteria. Criteria (a), (b), (e) and (k) of Policy PED9 of PPS4 are in dispute in this appeal.
12. Policy PED9 requires that (a) the appeal development is compatible with surrounding land uses, (b) it does not harm the amenities of nearby residents, and (e) it does not create a noise nuisance. The Council and the third parties argue that the appeal development fails these requirements. The Council contends that the residents at Nos 42, 44, 48, and 50 Newcastle Street plus those occupying a dwelling recently built are adversely impacted by the development in terms of noise, nuisance and general disturbance.
13. While commercial uses characterise the opposite side of Rooney Road, the main land use on the side of the appeal development is mainly residential apart from Kilkeel concrete, the WWTW and the builders' yard itself. During my site visit, I observed a significant amount of vehicular traffic on both Newcastle Street and Rooney Road. This traffic together with the operational original builders' yard creates a certain level of existing background noise. The Council consulted Environmental Health Office (EHO) during the processing of the planning application, and they had no objections to the appeal development subject to a condition to restrict the hours of operation which the appellant accepts.
14. The appellant commissioned a Noise Impact Assessment (NIA). It found that there are no undue noise impacts on the amenity of residents arising from the appeal development. The NIA indicates that the background noise monitoring was carried out from 26th – 30th May 2022 within the north-western portion of the site adjacent to the boundary of 50 Newcastle Street and adjacent to a recently permitted dwelling (LA07/2020/0192/F). It goes on to say that the noise monitoring was carried out during a period when little or no activity was occurring within the extended area and that those noise monitoring levels represent background levels. The NIA concludes that the predicted noise rating levels

arising solely from the appeal development would be below existing background noise levels at each receptor and, in accordance with BS4142: 2014, the noise impact is anticipated to be low at all receptors.

15. A cumulative NIA has also been carried out, and it takes into consideration the existing operating conditions of the site in combination with the proposed future operating conditions, and includes internal noise levels, sound reduction values, traffic movements, tonality and character conditions. The results of the cumulative NIA find minimal differences at each of the receptors over existing conditions. The NIA indicates this is largely because the noise characteristics associated with the development are similar in nature to those already experienced at the site. It concludes that the overall cumulative impacts are low, and consequently finds no further mitigation measures are required. Nevertheless, the appellant has offered to replace the standard tonal reversing alarms on the forklift trucks with a broadband reversing alarm.
16. While the Council accepts the methodology of the NIA but not its findings, the third party did not accept either the NIA's methodology or its findings. As outlined above, I experienced a high level of noise arising from vehicular traffic on the surrounding roads and some noise emanating from a forklift truck on the site. Given the noise I could discern was mainly from background traffic and factoring in that EHO, who have expertise in this matter had no objections and that the Council accepted the methodology employed, I accept the NIA. I am reinforced in this conclusion as neither the Council nor the third party presented substantive evidence to persuade me that its findings were incorrect.
17. The third parties contend that the appeal development would result in an increase in traffic noise. The NIA indicates that the existing site operates with an unlimited number of HGV movements coming to and from the original yard area, so this is not a new noise source. The NIA goes on to say that HGV movements have been incorporated into the Cadna noise model similarly to the forklift truck movements. The NIA models the worst-case scenario as 4 no. HGV movements occurring continuously every hour during the opening times. This was found acceptable and could be conditioned in the event of an approval.
18. The NIA shows that predicted noise levels associated with the appeal development would be below existing background noise levels at all identified receptors. It concludes that, in accordance with BS4142:2014, the noise impact is anticipated to be low at all receptors. The overall cumulative impacts are also considered to be low. The NIA states that given that the noise rating levels were predicted to be below the existing background levels at all receptors, no mitigation measures are proposed. Nevertheless, the appellant offers to replace the standard tonal reversing alarms fitted on the forklift trucks with a broadband reversing alarm.
19. Given the findings of the NIA and that conditions could be imposed to adhere to the limits stated therein, I am satisfied that the appeal development would not adversely affect neighbouring residents in terms of noise, nuisance and general disturbance and that it would be compatible with surrounding land uses.

20. The Council and the third parties contend that the boundary wall is dominant, overbearing and causes loss of light to the residential properties at numbers 42, 44, 48, 50 Newcastle Street and to the recently constructed dwelling. Paragraph A31 of the Addendum to Planning Policy Statement 7 'Residential Extensions and Alterations' (APPS7) is cited. However, that policy relates to residential extensions and/or alterations. The permitted development rights afforded under Part 3 Class A.1 (b) of the Schedule of the Planning (General Permitted Development) Order (Northern Ireland) 2015 allow the appellant to erect a 2-metre-high wall. The subject wall is approximately 2.55 metres high.
21. I saw materials stacked up to around 4 metres in height along the extent of the site boundaries of the extended yard area. I stood in some of the rear gardens that adjoin the extended yard area. The stacked materials were visible, and they did appear excessively high. Notwithstanding my on-site observations, the site layout plan shows two separate stacking height zones within the extended concrete yard area. Drawing numbered 02 Rev A indicates that the materials/supplies would not be stacked above the height of the 2.55 metres high boundary walls around the periphery of the site in the area shaded green, and that supplies in the central area of the site, shaded in red, would not be stacked above 4 metres in height. The appellant proposes the imposition of a planning condition to control this arrangement should the appeal be allowed.
22. Whilst noting the third-party reservations, I consider that such a condition would be necessary if the appeal is allowed. This would ensure that the appeal development would not be overbearing or dominant, nor result in any adverse loss of light on nearby residents. Such a condition could also be readily enforceable.
23. The Council states in its consideration of criterion (a) of Policy PED9 that the rear amenity area of the host dwelling at 48 Newcastle Street has been significantly reduced, and that many of the mature trees and landscaping have been removed and that this impacts negatively on the character of the area. I am satisfied that the remaining rear amenity space is adequate in size considering the surrounding context. Furthermore, no persuasive evidence is before me to indicate that the trees were protected. In the evidential context, I conclude that the appeal development is compatible with the surrounding land uses and that it would not harm the amenities of nearby residents. The appeal development does not offend criteria (a), (b) and (e) of Policy PED9 of PPS4.
24. The Council also alleges that the building materials are not adequately screened from public view and that this arrangement is "an eyesore". Criterion (k) of Policy PED9 requires appropriate boundary treatment and means of enclosure and that any areas of proposed outside storage are adequately screened from public view.
25. I saw a glimpsed view of the stacking materials from the Rooney Road and beyond the garages of Nos. 42 and 44 Newcastle Street. I did observe part of the boundary wall and some of the metal shelving and building materials from that road. The extended yard area and the building materials stacked within it are not visible from Newcastle Street due to the dwellings that face onto that street. As previously discussed, if the above condition is imposed should permission be granted, together with the retention of the 2.55 metres high boundary wall, I am

satisfied that given the surrounding existing buildings and the yard's distance from the two surrounding public roads, that appropriate boundary treatment and means of enclosure would be provided and that the outside storage area would be adequately screened from public view. The appeal development would not therefore offend criterion (k) of Policy PED9 of PPS4. The Council's first reason for refusal and the third parties' concerns in this regard are therefore not sustained.

26. With respect to the second reason for refusal, the Council clarified that the reference to Policy NH5 of PPS2 was a typo and that Policy NH6 of PPS2 should have been quoted. All parties had an opportunity at the hearing to respond to this matter, so I am satisfied that no prejudice arises in considering Policy NH6.
27. Policy NH6 'Areas of Outstanding Natural Beauty' of PPS2 states that planning permission for new development within an AONB will only be granted where it is of an appropriate design, size and scale for the locality and certain criteria are met. The Council contends that the appeal development is not sympathetic to the special character of the AONB in terms of its siting, scale and design.
28. Paragraph 5.16 of the policy says that in assessing proposals, account will be taken of the Landscape Character Assessments and any other published guidance such as countryside assessments produced as part of the development plan process, as well as AONB Management Plans and local design guides. The Council refers to no such documents. The appeal site is in the heart of Kilkeel adjacent to the town centre. The area is not in a tranquil rural setting, nor does it exhibit any distinctiveness or other features particular to the Mourne.
29. Notwithstanding that commercial uses are predominantly on the opposite side of the Rooney Road, I accept the appellant's argument that the expansion of the existing builder's yard is in keeping with the prevailing character of this small part of the Mourne AONB and would cause no harm to it especially when factoring in the appellant's offer to restrict the height that the building materials can be stacked to and given the surrounding built form. All in all, I am satisfied that the development would be of an appropriate design, size and scale for the locality. The appeal development would not offend Policy NH6 of PPS2. The Council's second reason for refusal is therefore not sustained.
30. The appellant indicates that the builders' yard is securely locked in the evenings. However, the third parties allege that criminals will be attracted to the area due to the storage of valuable materials and that a neighbouring property may be used as an access point. I am unaware of any such incidents arising in respect of the existing premises or the appeal development. No police reports have been provided. Also, there is a 2.55-metre-high boundary wall around the site and the stacking of the building materials as discussed, which can be controlled, would be likely to deter criminals.
31. The third parties contend that there would be light pollution from the floodlighting poles erected around the yard. At my site visit, I saw columns/poles erected but the lights themselves were not in place. However, those columns/poles are not shown on the drawings or described as part of the appeal development, so they

would not benefit from consent if the appeal were allowed. At the hearing, the appellant offered to remove the floodlighting poles and suggested implementing a low lighting scheme as part of the development. To my mind, floodlighting could likely harm the amenities of neighbouring residents particularly during the winter months. However, I accept that this issue could be overcome by installing an appropriate level of low lighting in the extended yard area. A suitably worded condition could be imposed requiring the submission and approval of a lighting plan showing low lighting on the boundary walls if permission is granted. The third parties' objection in this regard is therefore not sustained.

32. The third parties raise odour and air pollution concerns. They contend that there would be fumes from the lorries and machinery associated with the builders' yard near neighbouring dwellings. However, EHO informed the Council that it had no objections. Therefore, and given my own observations, in the evidential context provided, I am not persuaded that the alleged odour concerns would warrant the dismissal of the appeal.
33. Other concerns were expressed by the third parties regarding general health and safety concerns. If permission is granted, I am satisfied that restricting the height of the materials stored around the periphery of the appeal site would ensure no safety risk to those neighbouring residents enjoying their gardens. In any event, there is separate legislation pertaining to these matters that the appellant would have to abide by.
34. The third parties state that CCTV *may* be proposed and that this would be an invasion of their privacy (my emphasis). However, I did not witness any CCTV on the premises and it is not shown on any of the appeal drawings. The European Convention on Human Rights (ECHR) is also cited by the third parties. It is appreciated that Articles 1 and 8 of the ECHR, which provide for the protection of property and the peaceful enjoyment of possessions, may be engaged in this appeal. Rights under the ECHR are qualified, however, and the legislation clearly envisages that a balance be struck between the interests of individuals and those of society as a whole. I have already concluded that the appeal proposal would not harm the amenities of nearby residents. It is therefore not in the public interest to withhold permitting this development.
35. As only a corner of the extended yard area abuts the corner boundary of the Beylagh House LLPA and given that a condition could be imposed restricting the height of the building materials, I do not consider that a landscape buffer is necessary. I am satisfied that the appeal development would not negatively impact on Beylagh House and its garden as the important features of the Beylagh House LLPA would remain unaffected by the appeal development. The appeal development would therefore not offend Policy CVN3 of the BNMAP.
36. Given that I have found that the Council's first and second reasons for refusal and the third parties' concerns are not sustained, the appeal must succeed. In the interests of visual amenity, it is necessary to impose a condition restricting the stacking of the materials/supplies around the periphery of the site and in the central area. To protect the amenity of surrounding residents, noise conditions, a

condition limiting the opening hours, a condition restricting the number of HGV movements and a condition requiring a lighting plan are also necessary.

Conditions

1. The permitted development shall not be open to the public outside the following hours: - 08:00 to 18:00 Monday to Friday, 08:00 to 12:00 on Saturday.
2. The level of cumulative noise immissions from the development hereby approved shall not exceed the values set out in the table below. Noise limits for dwellings which lawfully exist or have planning permission for construction at the date of this permission but are not listed in the table below shall be those of the physically closest location listed in the table, unless otherwise agreed in writing by the Council.

Location	Address	Cumulative Noise Level (dBA)
R1	50 Newcastle Street	37.6 dB
R2	50 Newcastle Street	37.6 dB
R3	50 Newcastle Street	33.1 dB
R4	44 Newcastle Street	34.4 dB
R5	44 Newcastle Street	38.4 dB

3. Within two months of the date of this decision, fork lift trucks or loaders serving the permitted development shall have a sound power level no greater than 92dB (A) and shall only be fitted with wide band reversing alarms.
4. The number of Heavy Goods Vehicle movements to and from the permitted development shall not exceed 4 trips per hour during the hours of operation.
5. The stacking of materials shall not exceed the height of the 2.55 metres high boundary wall in the area shaded in green and shall not exceed the height of 4 metres in the area shaded in red on the drawing numbered 02 Rev A.
6. Low lighting shall be installed on the internal boundary wall within six months of the date of this decision and shall be in accordance with the specifications set out in a lighting plan submitted to and approved in writing by the planning authority.

This decision relates to:

Drawing No.	Drawing Title	Scale	Council Received Date	Architect Date
01	Location Map	1:2500	15 Nov 2021	-
02	Site Plan identifying new concrete yard	1:500	15 Nov 2021	Nov 2021
02 Rev A	Proposed Site Plan & Section	1:500	-	Nov 2021

COMMISSIONER B STEVENSON

List of Appearances

Planning Authority: -

Mr M Keane (NMDDC)
Mr E Farrell (NMDDC)

Appellant: -

Mr B Starkey (O'Toole & Starkey)
Mr Colin Knox (James Knox and Sons Ltd)

Third Parties: -

Mrs Jewell Gore

List of Documents

Planning Authority: -

"A" Statement of Case (NMDDC)

Appellant: -

"B" Statement of Case (O'Toole & Starkey)

Third Party: -

"C" Statement of Case (Mrs Jewell Gore)