

Derry City and Strabane District Council Planning Committee Report

COMMITTEE DATE: 8th September 2021

APPLICATION NO: LA11/2020/0551/O

DATE APP REC: 29.07.2020

APPLICATION TYPE: Outline Application

PROPOSAL: Proposed site for infill dwelling and garage

LOCATION: Approx 12m west of no 81 Bellspark Road, Clady

APPLICANT: Mr G McCauley, 81 Bells Park Road, Clady, Tyrone, BT82 9QY

AGENT: Desmond O'Neill, 17 Main Street, Dromore, Omagh, BT78 3AE

ADVERTISEMENT: 20.08.2020

RE-ADVERTISEMENT: 24.06.2021

STATUTORY EXPIRY: 08.07.2021

RECOMMENDATION: REFUSE

REASON FOR PRESENTATION TO COMMITTEE: Recommendation to Refuse. This application is returned to Committee following deferral on 5th May 2021 to consider amended plans that were submitted as late information and consult with DFI Roads. This application was scheduled for June 2021 Committee however further late information was received on 5th June 2021 as late which required further consultation with DFI Roads and the case was deferred again.

All planning application forms, drawings, consultations, representations, letters etc. relating to this planning application are available to view on www.planningni.gov.uk

1. Description of Proposed Development

The application is for outline permission an infill dwelling and domestic garage.

2. EIA Determination

This application has been screened by Council and as the development does not fall within any of the categories of Schedule 2 of The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017, it is therefore considered that an EIA determination is not required.

3. Habitats Regulations Assessment (HRA)

Assessment under the Habitats Regulations is not required as there is no watercourse directly abutting this site which could provide a potential hydrological link to any protected site. Therefore, it is unlikely that there will be any adverse effects on integrity of any National or European site. The proposal incorporates the removal of trees within the site but this will not adversely affect priority species or their habitats, which are afforded protection.

4. Site and Surrounding Area

The application site is a roadside plot, located on the northern side of the Bells Park Road between two existing dwellings. The site is relatively flat and has areas of gravel hard stand and is the same level as the public road. The roadside boundary of the site is defined partly by tall mature trees along this frontage, with an existing opening for vehicular access. The boundary to the south east, with No 81 Bells Park Road is defined by a wooden fence approx 2m in height. The north western boundary with No 83 is defined by tall mature coniferous trees, and other vegetation. The rear boundary to the north east has also been defined by mature trees. The application site is not openly visible when travelling towards the site in either direction along Bells Park Road.

The dwelling at No 81 has been included within the blue lands of this application site and is owned by the applicant, which is a one and a half storey dwelling. No 83 is an existing bungalow, with attic conversion. Along the NW boundary of the site there is a single storey building built of block with a tin roof, however there does not appear to be any windows or doors to this building, unless located along the side which faces onto the mature boundary with No 83. The site contains 2 lorry containers, as well as storage of materials and equipment over part of this site.

The surrounding area is agricultural in nature, characterised by single dwellings and farm holdings, with Clady GAA playing fields located approx 200m to the west of this site. The application site is located in the countryside approx 0.5km east of the village of Clady.

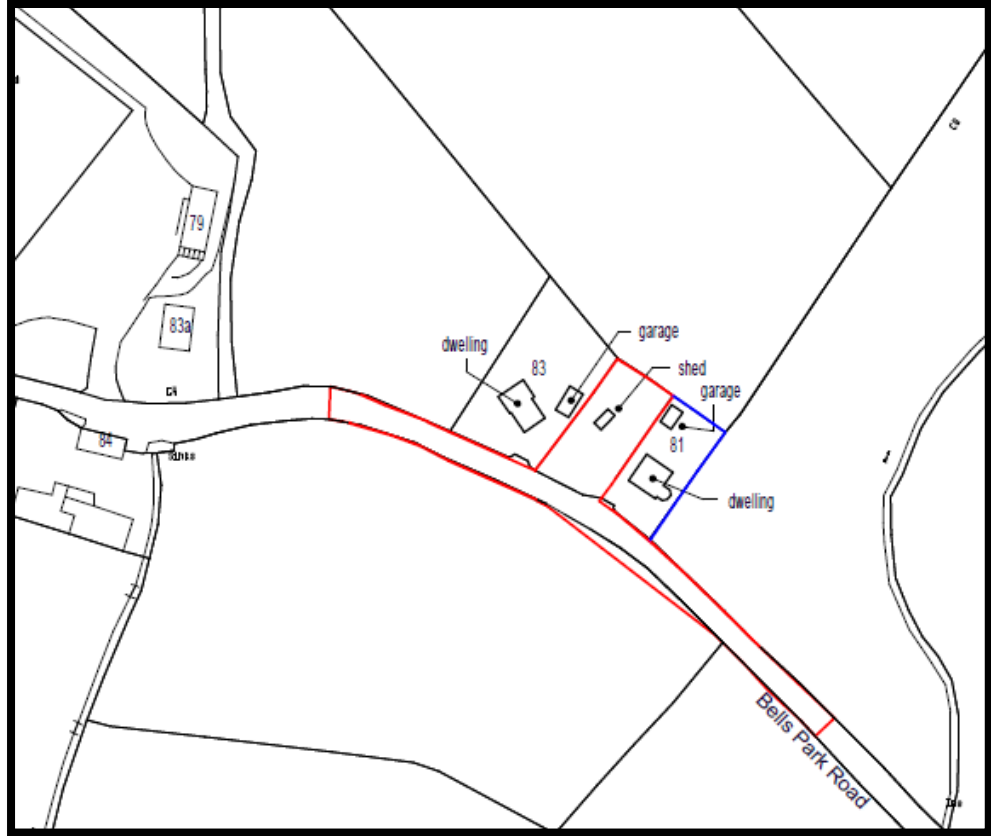


Figure 1 : Site Location Plan



Figure 2 : Aerial photo of application site (source OSNI)



Figure 3 : Photograph of application site (view from the west towards the site)



Figure 4 : Photograph of application site on the left (view from the east towards the site)



Figure 5: photo of application site

5. Site Constraints

None

6. Neighbour Notifications

Neighbour Address	Date Neighbour Notified
83 Bells Park Road Clady Tyrone BT82 9QY	14/04/2021

7. Relevant History

Same application site.

J/2013/0198/O Infill dwelling and garage to replace existing builders office/yard.

Refused 24.05.2016

8. Policy Framework

Regional Development Strategy (RDS) for Northern Ireland 2035

Strabane Area Plan 1986 - 2001

Strategic Planning Policy Statement for Northern Ireland

Planning Policy Statement 2 : Natural Heritage

Planning Policy Statement 3 : Access, Movement and Parking

Planning Policy Statement 21 : Sustainable Development in the Countryside

Supplementary Planning Guidance - Building on Tradition

DFI Planning Advice Note –Implementation of Strategic Planning Policy on Development in the Countryside

9. Consultee Responses

- NI Water have no objections to the proposal. Standard informatives apply in terms of water supply and sewerage disposal.
- DFI Roads have advised that visibility splays of 2.4 x 90 will be required to the north west (critical direction) of this site, and 2.4 x 105m are required to the south east of this site. Forward Sight Distance (FSD) of 90m to the NW and 105m to the SE are required. They have requested amended plans to show the site location plan amended to include the land required to provide the visibility splays and FSD, however plans submitted as late information from the agent on 3RD May 2021 to address their requirements still don't provided to an acceptable standard, therefore DFI Roads have recommended refusal on road safety grounds. Following the receipt of a P2a, and re-consideration of the plans provided DFI Roads have no objections to the proposal.
- Environmental Health have provided conditions in relation to potential unforeseen ground contamination and have provided advice in relation to construction noise and dust, septic tank arrangements and radon.
- DAERA Water Management Unit refer to standing advice containing conditions and informatives.
- DAERA Regulation Unit have no significant records of previous potentially contaminating land uses on this site or the adjacent area, other than the previous / existing use as a builders yard. They

have provided conditions in relation to potential unforeseen ground contamination and have provided advice in relation to same.

10. Representations

One letter of support was received from Daniel Mc Crossan MLA. The points raised are detailed below:

- There are no representations opposing this development.
- The site plan shows a substantially built up frontage with an existing shed located within the site, and aerial photos have been submitted to show that this shed has been located on the site from at 2015.
- The site is of a similar width to the adjoining plots as indicated on the site plan, thus indicating that the site is capable of siting a new dwelling.
- The built up frontage already includes a line of 4 buildings as follows: dwelling at No 81; Mr McCauley's shed; garage at No 83 and a dwelling at no 83.

11. Planning Assessment and Other Material Considerations

Section 6 (4) of The Planning Act (Northern Ireland) 2011 requires the Council to make planning decisions in accordance with the local development plan, unless material considerations indicate otherwise.

The SPPS introduces transitional arrangements which will operate until the Council's Plan Strategy has been adopted. This is a material consideration which supersedes PPS 1 General Principles. During this period planning authorities will apply the existing policy which is retained. Any conflict between the SPPS and the retained policy must be resolved in favour of the SPPS.

The site is located within the countryside and outside any settlement limits as designated within the area plan. The SAP operates as the LDP. It does not contain policy specific to the infilling of dwellings. Therefore, the tests of the relevant rural strategy will apply in consideration of such proposals. This is provided by Planning Policy Statement 21: Sustainable Development in the Countryside (PPS21) which is identified by the SPPS as a retained policy document.

PPS 21 : Sustainable Development in the Countryside

The first issue to consider in this proposal is the principle of this development. In this respect the proposal must meet one of the criteria of Policy CTY 1 of PPS 21. This proposal is considered under Policy CTY 8 Ribbon Development.

Policy CTY 8 states that planning permission will be refused for a building which creates or adds to a ribbon of development but 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. This is defined as a line of 3 or more buildings along a road frontage without accompanying development to the rear.

In consideration of this proposal it must first be established whether the application site is a gap site within a substantial and continuously built-up frontage as defined by the policy. The agent has provided an indicative site layout (Figure 6 below) to attempt to demonstrate that the application site falls within a substantial and continuously built up frontage.

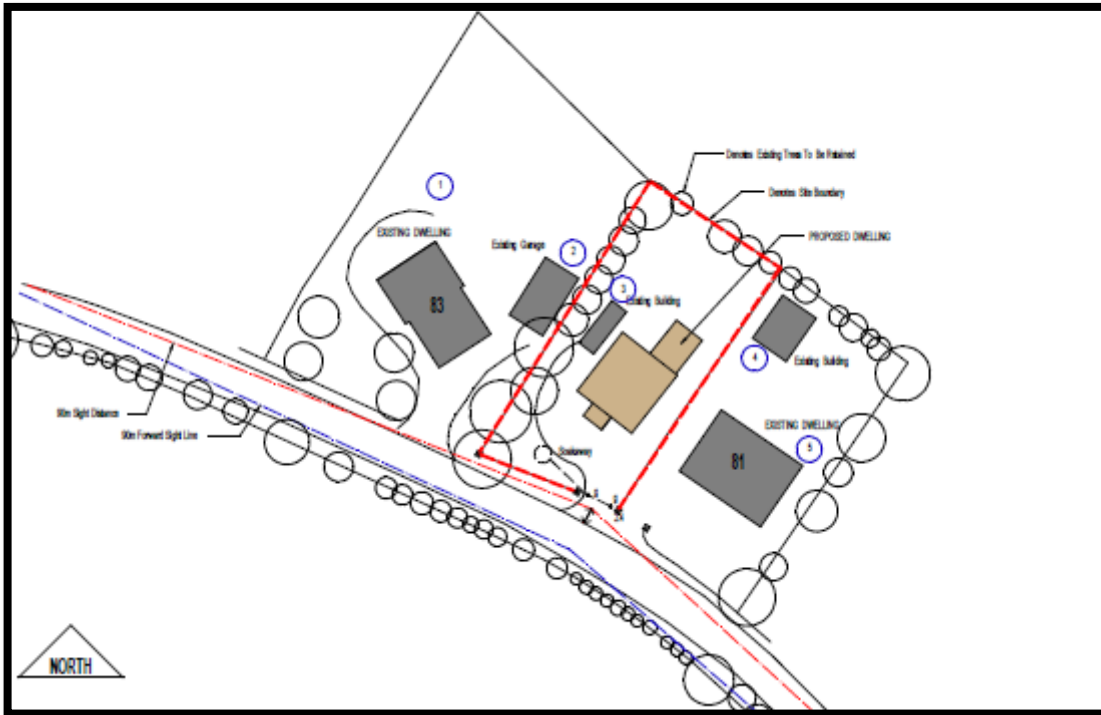


Figure 6 : Indicative Site Layout

This site is a parcel of land adjacent to an existing residential dwelling at No 81 Bells Park Road. The application site is located between two residential dwellings but is not considered a 'gap site' in a substantial and built up frontage, as there is only one dwelling either side.

The application site appears as though it may have originally formed part of the curtilage of the dwelling at 81, but has been divided off and used for building storage for some time (more than 5 years).

The proposed site is not located within a substantial and continuously built up frontage as there is only one dwelling either side of the application site. As can be seen in Figure 6, the garages are located to the side and rear and therefore do not have a frontage onto the road and are not visible when travelling along this section of the road.

In an attempt to demonstrate that this site has a built up frontage, the agent is relying on the inclusion of the above domestic garages and a block building located within the application sites as seen in Figure 7 below. Notably, this building does not have the benefit of planning permission and therefore is unauthorised. Officers have not been able to determine when this building was constructed on site.

The garages are set to the rear of the existing dwellings and notwithstanding the further clarification in the DFI PAN which does not add or change existing policy guidance, it is officers consideration that in any case, the garages do not contribute any frontage.

The agent submitted aerial photos claiming this building has been on site since April 2015, however the orthos are unclear and do not confirm if the building was in fact on site at this time. In Oct 2013 at the time of the previous application on the site, it was not built and it is difficult to ascertain if it has been there more than 5 years given it is located under the shelter of the trees on the boundary so is not clearly visible. He has also submitted rates bills in relation to No 81 Bells Park Road, one from April 2015 with Property Description as 'OFFICE & Y' (presumably means office & yard). This property description could be referring to the previous portacabin on the site as the current building is unlikely to be considered an office with no windows and doors. The current rates bill 2020 – 21 refers to 81 Bellspark Road but doesn't give a property description so doesn't demonstrate what these rates are for. The agent also submitted other rates bills for No 81, however the detail of these bills was not provided. An electricity bill for 81 was also provided however, this did not demonstrate evidence to show how long the existing building was on site. A CLUD has not been submitted to regularise this development.

Therefore having considered the evidence submitted in relation to the existing building on the site it is concluded that this is not sufficient to demonstrate that the building has been there 5 years. Nevertheless, if it were to be proven lawful, and used as a 'third' building, for the benefit of Policy CTY 8, given the dense vegetation and existing development there are very limited views of this building when travelling along this section of road as shown in the photos (Figures 3 and 4). Therefore, this building does not read as part of a substantially built up frontage.



Figure 7: Existing unauthorised building on site

Notably, this application site has also had a previous planning application assessed under the same policy with the same site circumstances. This proposal (J/2013/0198/O) was refused planning permission on 24.05.2016 as it was considered contrary to Policies CTY 8 and CTY 14 of PPS 21.

The frontage of the sites indicated by the agent measure 24m (application site) and 22m (adjoining site at No 81 within blue land) and 32m frontage for No 83. Whilst the plot respects this existing development pattern, the application site is not considered a small gap site in an otherwise substantial and built up frontage as it is not set within a line of three buildings that all front the road and do not have accompanying development to the rear. Therefore, it is not considered that the dwellings at 81 and 83 Bells Park Road, comprise a substantial and continuously built up frontage along this section of the road and therefore this application fails to meet with Policy CTY 8 of PPS 21. For these reasons, the proposal fails to comply with policies CTY 8 and CTY 14 of PPS 21.

Policy CTY 13 of PPS 21 must be also be considered. In accordance with the SPPS, a greater level of emphasis is placed on integration than that set down in CTY 13. As this is an outline application no specific design details are proposed at this stage. As indicated in Figure 6 above, the dwelling is proposed to be located centrally within the site with the retention of the existing mature vegetation along two of the site boundaries. As a result of this vegetation and existing dwellings, the application site is enclosed from public view when travelling along the Bells Park Road in an east or westerly direction. Mature trees also enclose the site to the rear along the north eastern boundary and the roadside boundary is part defined by mature trees, which screen views into this site, however these would require removal to provide adequate access arrangements. Given the above and the topography of this site, a dwelling would not be prominent in the landscape, as it will be screened from view from the public road by the existing vegetation and dwellings either side of this site at No 81 and No 83.

The removal of trees along the frontage will open up the site somewhat however the site does benefit from long established boundaries which would provide a suitable degree of integration. Therefore, this proposal is considered to comply with Policy CTY 13 of PPS 21 in terms of integration.

Policy CTY 16 of PPS 21 deals with sewerage infrastructure for rural development proposals relying on non-mains sewerage. The P1 Form states that foul sewerage shall be disposed of by septic tank. Environmental Health do not have any fundamental objections to these arrangements subject to compliance with relevant standards, seeking appropriate consents and a minimum 15m separation distance to the nearest habitable building, which should be achievable within this site. The proposal therefore accords with Policy CTY 16.

Residential Amenity and Human Health

With regards to amenity, the residents of nearby properties are considered as are future residents of the proposed development. The SPPS states that the planning system operates in the public interest of local communities. The basic question is whether the proposal would unacceptably affect amenities of owners or occupiers of neighbouring properties and the existing use of the land and buildings that ought to be protected in the public interest. Given the location of the access, there will be no adverse impact on the adjacent residential properties from vehicles other than during construction. Following

this, any associated traffic movements will be from those residing at or visiting the property which would not adversely affect amenity. Environmental Health have provided standard advice for the applicant/developer to adhere to during the construction phase to ensure that there are no adverse impacts on the amenity of the adjoining dwellings. The indicative site layout shows that there is sufficient separation distance between the existing dwelling and proposed dwelling which will ensure that there is sufficient distance to ensure that there is no loss of light and to ensure that subject to an appropriate design there will be no overlooking into the private amenity space of no 81. The drawings also indicate that the mature tree boundary along the north west of the site boundary is to be retained between the site and No 83 which will ensure their residential amenity is retained. Therefore it is considered that the proposal complies with the SPPS in respect of amenity of the nearby residents.

In terms of human health of any future residents, Environmental Health advise that the given the existing use of this site as a 'builders storage yard' there is the potential for contaminated land to be uncovered during construction. As such, they have recommended conditions to ensure that should any contamination be encountered, it will suitably dealt with and removed safely from the site.

Site Access, Movement and Parking

PPS 3 sets out the planning policies for vehicular and pedestrian access, transport assessment, the protection of transport routes and parking. DFI Roads initially advised that visibility splays of 2.4 x 90 will be required to the north west (critical direction) of this site, and 2.4 x 105m are required to the south east of this site. Forward Sight Distance (FSD) of 90m to the NW and 105m to the SE have been determined. They requested amended plans to show the site location plan amended to include the land required to provide the visibility splays and the FSD. DFI Roads have also advised that trees across the site frontage will need to be removed, 1 telegraph pole set back and third party lands may also be required.

An amended site location plan was provided on 26.11.20 to include a portion of the field opposite the proposed site access required for the provision of the FSD to the SE, however the required notice has had not been served on the owner of this field. As such, the original recommendation to Committee was to refuse for this reason. An amended P2a (certificate of land ownership) was received on 5th

June 2021. DFI Roads have considered this alongside the drawings previously received and have no objection to the proposal. There have been no objections from the landowner identified on the P2a.

Therefore, as DFI Roads have no objections to the proposal and have provided standard conditions, it is concluded that the proposal complies with Policy AMP 2 of PPS 3 with regards to site access. The proposed site is also capable of providing sufficient parking for the proposed dwelling and therefore there proposal also complies with Policy AMP 7 of PPS 3.

Natural & Built Heritage & Flood Risk

In terms of natural heritage, PPS 2 provides the policy context. It sets out the planning policies for the conservation, protection and enhancement of our natural heritage. Though approximately 20m of hedgerow and trees will need to be removed to provide the visibility splays, this is not considered to be a field boundary and the mature tree does not appear to be a native species. Nevertheless, should approval be granted the provision of a native species hedgerow to the rear of the visibility splays can be condition to compensate for any potential loss of habitats and species, as is standing advice by DAERA NIEA. Therefore, it is considered that the proposal accords with Policies NH 2 and NH5 of PPS 2.

As detailed above, assessment under the Habitats Regulations is not required as there is no watercourse directly abutting this site which would provide a hydrological link to any protected site. Therefore, it is unlikely that there will be any adverse effects on integrity of any National or European site and the proposal complies with Policies NH 1 and NH 3 of PPS 2.

PPS 15 sets out the policies to minimise and manage flood risk to people, property and the environment. There have been no flood risks identified at this site and due to the nature and scale of the scheme a Drainage Assessment is not required. Therefore, the proposal complies with PPS 15.

12. Consideration of the Letter of Support

As detailed above, it is considered that this proposal does not comply with Policy CTY 8 of PPS 21 as the site is not located within a substantial and continuously built up frontage as defined by the policy.

The building referred to does not have the benefit of planning permission and therefore is unauthorised. Officers have not been able to determine when this building was constructed on site.

13. Conclusion and Recommendation

Having considered all material considerations, including the development plan, relevant planning policies and consultations, it is concluded that the proposal is contrary to Policies CTY 8 and CTY 14 of PPS 21 in that the application site is not located within a substantial and continuously built up frontage. Furthermore, this development would cause a detrimental change to and erode the character of this rural area, by creating a ribbon of development, and result in a suburban style build-up of development when viewed with existing dwellings along this part of Bells Park Road. Therefore, refusal is recommended for the reasons as set out below.

14. Proposed Refusal Reasons

1. The proposal is contrary to the Strategic Planning Policy Statement and Policy CTY 1 of Planning Policy Statement 21, in that there are no overriding reasons why this development is essential in this rural location.
2. The proposal is contrary to the Strategic Planning Policy Statement and Policies CTY 8 and CTY 14 of Planning Policy Statement 21, in that the proposed dwelling, if permitted would create a ribbon of development along Bellspark Road which would result in a detrimental impact to rural character and visual amenity of the area.
3. The proposal is contrary to the Strategic Planning Policy Statement and Policy CTY 14 of Planning Policy Statement 21, in that the proposed dwelling, if permitted will result in the creation of ribbon development and consequently a suburban style build-up of development when viewed with existing buildings and would further erode the rural character of the area.