

# Appeal Decision

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<b>Appeal Reference:</b>	2020/A0133
<b>Appeal by:</b>	Mr John Heatley
<b>Appeal against:</b>	The refusal of full planning permission
<b>Proposed Development:</b>	Agricultural building
<b>Location:</b>	Approx. 130m southwest of 17 Whitehill Drive, Randalstown
<b>Application Reference:</b>	LA03/2020/0007/F
<b>Procedure:</b>	Written Representations with Commissioner's site visit on 30 <sup>th</sup> September 2022
<b>Decision by:</b>	Commissioner B Stevenson, dated 31 <sup>st</sup> October 2022

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## Decision

1. The appeal is dismissed.

### Preliminary Matter

2. The third parties alleged that information that the appellant set out in his statement of case regarding the breeding of turkeys was not raised during the processing of the application for planning permission and should be treated as a new matter introduced at appeal stage. Given the nature of the issues surrounding the appeal, I consider this information to be an important material consideration that relates to issues pertaining to the Council's refusal reasons. Accordingly, I do not consider that the information is a new matter. I am therefore satisfied that this information is admissible in accordance with Section 59 of the Planning Act (Northern Ireland) 2011. No prejudice arises from admitting this information as all parties involved had an opportunity to comment on it.
3. A new block plan accompanied the appellant's statement of case. It shows the proposed building sited further north than that shown on the stamped refused drawing (Drawing No. 02/2) and a second building that is referred to as an office and store. The second building is not indicated on the stamped refused block plan (Drawing No. 02/2). However, it was proposed on the original block plan (Drawing No. 02/1) but in a different part of the site.
4. The description of the proposed development as set out on the application form (P1 Form) submitted with the application was for 'erection of agricultural shed and an ancillary office and storage building'. This was carried through to the description of proposal as advertised by the Council. However, it was not referred to on the Council's decision notice as the appellant removed the ancillary office and storage building from his application of planning permission. The re-

introduction of a second building sited as shown on the amended plan goes beyond that described on the decision notice, the appeal form and consequently the public advertisement of the appeal which all relate to a single building. The amended block plan would therefore go to the heart of the proposal. If I were to accept the amended block plan, it could give rise to prejudice to third parties as the appeal proposal would not have been correctly advertised. The amended block plan is therefore not admitted, and the appeal is assessed on the stamped refused drawings.

## Reasons

5. The main issues in this appeal are whether the proposal would: -
  - be acceptable in principle in the countryside;
  - create ribbon development;
  - integrate satisfactorily into the countryside; and
  - erode the rural character of the area.
6. Section 45(1) of the Planning Act (NI) 2011 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. Section 6(4) of the Act requires that, where regard is to be had to the LDP, the determination must be made in accordance with the plan unless material considerations indicate otherwise. The Antrim Area Plan 1984-2001 (AAP) operates as the statutory LDP for the area wherein the appeal site lies. In the AAP, the appeal site is located outside any settlement limit and is within the green belt. The green belt policy contained in the AAP is outdated having been overtaken by regional policy for development in the countryside. No determining weight can therefore be attached to the provisions of the AAP.
7. The Strategic Planning Policy Statement 'Planning for Sustainable Development' (SPPS) is material to all decisions on appeals and sets out the transitional arrangements that will operate in the absence of an adopted Plan Strategy. Under the transitional arrangements, Planning Policy Statement 4 'Planning and Economic Development' (PPS4) and Planning Policy Statement 21 'Sustainable Development in the Countryside' (PPS21) are retained.
8. Policy CTY1 'Development in the Countryside' of PPS21 sets out a range of types of development which in principle are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development. One of these includes agricultural development in accordance with Policy CTY12. Paragraph 6.73 of the SPPS in relation to agriculture development essentially, repeats elements of Policy CTY12 of PPS21. In addition, Footnote 26 of the SPPS provides an update on the definition of what constitutes 'agricultural activity'.
9. Policy CTY1 of PPS21 also permits industry and business uses in accordance with PPS4. Paragraph 6.87 of the SPPS states that amongst others that expansion proposals for industrial and business purposes will normally offer the greatest scope for sustainable economic development in the countryside. This aligns with Policy PED4 'Expansion of an Established Economic Development Use in the Countryside' of PPS4 which permits the expansion of an established economic development use in the countryside subject to certain criteria. Accordingly, other

than the definition update, there is no conflict or change in policy direction between the provisions of the SPPS, PPS21 and PPS4. The latter two therefore provide the policy context for determining the proposed building subject to the definition update in the SPPS.

10. Policy CTY12 of PPS21 is entitled 'Agricultural and Forestry Development.' It states that planning permission will be granted for development on an active and established agricultural holding where it is demonstrated that it meets certain criteria. Paragraph 5.56 of the amplification text of the policy states that for the purposes of the policy the determining criteria for an active and established business will be those set out under Policy CTY10 of PPS21. Criterion (a) of Policy CTY10 requires that the farm business is currently active and has been established for at least 6 years. Paragraph 5.38 of the amplification text states that the applicant will be required to provide the farm's business identification number along with other evidence to prove active farming over the required period.
11. The appellant stated that his farm business comprises the handling of a small flock of sheep and the rearing of turkeys and pheasants. He stated that the proposed building would be used to hold feed and store machinery for his business. However, the Council considered that the appeal proposal failed to meet the first requirement of Policy CTY12 in that the proposed development would not be associated with an active and established farm business but rather with a commercial enterprise. Section 250 of the Planning Act (Northern Ireland) 2011 defines "agriculture" as including livestock breeding and keeping. Paragraph 5.39 of the justification section of Policy CTY10 has been updated by footnote 26 of the SPPS which defines 'agricultural activity' as "the production, rearing or growing of agricultural products, including harvesting, milking, breeding animals, and keeping animals for farming purposes, or maintaining an agricultural area in a state which makes it suitable for grazing or cultivation" and so on.
12. The Department of Agriculture, Environment and Rural Affairs (DAERA) stated that a farm business ID number (664028) was issued on 10<sup>th</sup> December 2018. However, no Single Farm Payments had been claimed. No official DAERA farm maps were provided that showed the extent of the appellant's holding associated with his farm business identification number. However, the appellant presented a plan that showed compounds, buildings and runs on identified owned and leased land located around the dwelling at No. 14 Whitehill Drive.
13. With respect to his sheep farming activities, I witnessed a small number of sheep grazing in one large pen. I note that the appellant accepted that the flock of sheep is a recent venture, and that this element is not established for 6 years. Given this, the keeping of sheep cannot therefore form part of my overall consideration of agricultural activity for the purposes of meeting the policy requirements. In any case, I do not consider that the keeping of the small flock of sheep is the main activity associated with the appellant's business.
14. The appellant stated that he intends to diversify his production into ducks, geese and guinea fowl for sale to local producers who currently supply many butchers' shops. No ducks, geese or guinea fowl were spotted. Moreover, the breeding of those birds is indicated as merely an intention.

15. A pheasant flock number (UK901596) that was allocated in December 2005 was provided. During my site visit, I saw a significant number of pens with pheasants in them, and some were empty. Correspondence from DAERA dated 14<sup>th</sup> August 2020 confirmed that the appellant is producing 30,000 birds on a yearly basis and that they are sold to estates throughout Northern Ireland for the purpose of game shoots. The appellant stated that on average 16,000 pheasants are housed in the pens at any one time. This was undisputed.
16. It was disputed between the third parties and the appellant that he breeds around 400 turkeys per year for the Christmas and Easter markets. I saw a small number of turkeys in some of the pens located in front of the appellant's dwelling, but I did not see the numbers suggested. Notwithstanding this, I accept that some turkeys are probably being sold for food production albeit low numbers are likely involved in comparison to the scale and numbers associated with the rearing of pheasants. However, no persuasive evidence was presented that demonstrated that 400 turkeys had been bred in each of the last 6 years on the land. Nevertheless, given my on-site observations, the DAERA evidence and the numbers associated with the pheasants, I consider that the main activity on the land is the breeding of pheasants.
17. In *House of Lords in Earl of Normanton v Giles [1980]*, the presiding judge concluded that the breeding of pheasants for sporting purposes fell outside the definition of agricultural activity. The appellant referred to a Planning Inspectorate's decision in 2001 (DCS No: 37816226) from Wiltshire and pointed out that the Inspector considered that agriculture is defined as including the breeding and keeping of livestock without any reference to how they are killed or the purpose for which they are bred. No copy of this decision was provided so I do not know the confines within which it was reached. I am therefore not persuaded that the Wiltshire Planning Inspectorate decision takes a different approach to that set down in the judgement.
18. Notwithstanding the 2001 Wiltshire Planning Inspectorate's decision, I consider that for animals to be bred, and kept on a farm, they must be for farming purposes, that is, for food production. Given my on-site observations and the scale of the operation identified by DAERA and that they claimed that the birds are sold to estates for game shoots, I am not persuaded that the pheasants are used primarily for food. Therefore, I conclude that the breeding of pheasants on the appellant's holding is for sporting purposes, and it is not agricultural activity.
19. A third party in support of the proposal stated that grass production continues to be a growth area for the owners and the storage of hay as a feed stuff is by its nature necessary and bulky. However, no substantive evidence was presented regarding this activity that persuaded me that this is occurring on the appellant's owned and leased land over the last 6 years. The appellant stated that the land on which the birds graze is kept in good environmental condition. I observed pheasants and a small flock of sheep grazing within the enclosed wired pens. Nevertheless, I am satisfied that this is ancillary to the primary activity on the land of breeding and keeping of pheasants for recreational purposes. For the reasons given, I conclude that the use of the land is not agricultural activity. The proposed

building would therefore be related to a commercial enterprise and would not be on an active and established agricultural holding. Consequently, the appeal proposal fails the first hurdle of Policy CTY12 of PPS21.

20. It was disputed between the third parties and the appellant whether there were suitable existing buildings on the holding. In support of the proposal, the third parties stated that the proposed building would alleviate already pressurised storage facilities within the original curtilage of the owner's domiciliary residence. The appellant stated that machinery is currently stored externally. I saw equipment sitting outside around the pens. A small cabin is currently being used to store bird feed and the appellant's original garage is being used both for domestic purposes and as the hatchery. I saw some feed stored in the garage also. From my on-site observations, I am satisfied that there are no suitable existing buildings within the appellant's owned and leased lands. Notwithstanding this, I have already concluded that there is no active and established agricultural holding.
21. Whilst the third parties argued that the proposal fails to comply with the basic requirement of being located beside existing buildings on the holding, the appellant contended that the appeal proposal meets the exceptional test under Policy CTY12 of PPS21 in that it permits alternative sites away from farm buildings. However, as I have already found that the appeal proposal fails to meet the first requirement in that it is not on an active and established agricultural holding, the exceptional test is not engaged. I therefore conclude that the appeal proposal would be contrary to Policy CTY12 of PPS21. Accordingly, the Council's second reason for refusal and the third parties concerns insofar as stated are sustained.
22. The appellant alleged that fish farms that breed fish for sport have previously been accepted as farming by the Commission and the Council. He referred to appeal decision 2006/A1675 which stated that the Department relied on the reasoning in appeal decision 2002/A236. In 2002/A236, fish were being bred for food rather than primarily for sporting purposes, and it is distinguishable from this appeal. The appellant also referred to Movanager Fish Farm but provided no specific planning report or planning decision to consider. Reference to neither of these supports the appellant's argument. Besides, every case must be considered on its individual merits and the prevailing policy at the time.
23. The appellant argued that the appeal proposal would be an expansion of an established economic development use. Policy PED3 of PPS4 states that the expansion of an established economic development use in the countryside will be permitted where the scale and nature of the proposal does not harm the rural character or appearance of the local area and there is no major increase in the site area of the enterprise. The policy also explains that a proposal for the major expansion of an existing industrial enterprise that would not meet the above policy provisions will only be permitted in exceptional circumstances.
24. For the purposes of the policy, economic development use comprises industrial, business and storage and distribution uses as currently defined in Part B 'Industrial and Business Uses' of the Planning (Use Classes) Order (Northern

Ireland) 2015. This relates to Class B1: Business, Class B2: Light Industrial, Class B3: General Industrial and Class B4: Storage or Distribution. The breeding of pheasants for sporting purposes would not to my mind fall within any of those use classes and it would not fit neatly into any other use class. I therefore consider it to be a sui generis use. The preamble of PPS4 states that the policy approach and associated guidance contained within this document may be useful in assessing proposals for other sui generis employment uses. However, no employment details of the gaming bird breeding business were provided.

25. As I have concluded that the appellant is breeding pheasants not for farming purposes, the appellant's gaming bird business would have no agricultural permitted development rights under the Planning (General Permitted Development) Order (Northern Ireland) 2015 (as amended). There is no evidence of planning permission being in place or a Certificate of Lawfulness of Existing Use or Development (CLEUD) having been granted by the Council. In the absence of such, I am not persuaded that the existing business is an established sui generis employment use that is suitable for expansion under Policy PED3 of PPS4. I therefore conclude that the expansion of the appellant's pheasant rearing business is not considered acceptable in principle in the countryside and would be contrary to Policy PED3 of PPS4. Accordingly, the appellant's argument in this regard is not sustained.
26. The third parties also stated that the proposal is contrary to Policies PED4 and PED9 of PPS4. Policy PED4 'Redevelopment of an Established Economic Development Use in the Countryside' of PPS4 relates to the redevelopment of an established economic development use in the countryside. However, the building is proposed on a greenfield site therefore this policy would not be applicable. Policy PED9 'General Criteria for Economic Development' of PPS4 sets out certain criteria that a proposal for economic development use would be required to meet. Given that I have concluded that the proposal is not considered acceptable in principle in the countryside under Policy PED3 of PPS4, it is not necessary to consider Policy PED9 of PPS4. The third parties' argument in this regard are not upheld.
27. The Council contended that the appellant cannot seek the benefit of planning permission for a commercial building under PPS4 given the description of the proposal and that this brings into question the validity of the proposal. However, I do not consider it necessary to consider the validity of the proposal as I have already concluded that there is no established sui-generis use to expand in the absence of a CLEUD having been granted.
28. The appellant did not argue that there were any overriding reasons why the development was essential and could not be located in a settlement or was otherwise allocated for development in a development plan. The appeal proposal would therefore offend Policy CTY1 of PPS21. Thus, the Council's first reason for refusal is sustained.
29. The third parties argued that the proposed building would be a prominent feature in the landscape from Whitehill Drive and the M2 motorway. They suggested that the site would have to be raised. However, the infilling of lands is not part of the

appeal proposal. Criterion (a) of Policy CTY13 'Integration and Design of Buildings in the Countryside' of PPS21 states that a new building will be unacceptable where it is a prominent feature in the landscape. No planting is proposed on the block plan (Drawing No. 02/2).

30. The appeal site is cut out of a large agricultural field that is on the western side of Whitehill Drive. The southern and western boundaries of the appeal site are undefined. The eastern roadside boundary is defined by a hedgerow of approximately 2 metres in height. An overgrown hedgerow and trees of around 3-4 metres in height demarcate the northern boundary of the appeal site. Whitehill Drive is a dead-end road that terminates at the M2 motorway. The M2 motorway runs parallel to the southern boundary of the wider subject field. Beyond the appeal site, an overgrown hedgerow of approximately 3-4 metres in height and trees define the southern and western boundaries of the field. Given that Whitehill Drive comes to a dead-end and that the proposed building would be at the end of this dead-end where there is no built form and existing mature vegetation, I am broadly satisfied that the proposed building would visually integrate into the local landscape and would not offend criterion (a) of Policy CTY13 of PPS21. The third parties' concerns in this regard are not upheld.
31. Policy CTY14 'Rural Character' of PPS21 states that planning permission will be granted for a building in the countryside where it does not cause a detrimental change to, or further erode the rural character of an area subject to complying with a list of criteria. The third parties expressed concerns that the appeal proposal would result in suburban style build-up. The policy states that a new building will be unacceptable where (b) it results in a suburban style build-up of development when viewed with existing and approved buildings. As there would be no existing or approved built form close to the appeal proposal, the proposed building would read as one single entity in the landscape. Accordingly, I am satisfied that the proposal would not result in a suburban style build-up of development. Criterion (b) of Policy CTY14 is therefore not offended and the third parties concerns in this regard are not sustained.
32. The third parties considered that the appeal proposal was contrary to Policy CTY8 of PPS21. Policy CTY8 'Ribbon Development' of PPS21 states that planning permission will be refused for a building which creates or adds to a ribbon of development. Paragraph 5.33 of the amplification text 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 are visually linked. Whilst the proposed building would not be visually linked with other buildings, it has common frontage with the dwellings at Nos. 15 and 17. I therefore find that it would create or add to a ribbon of development on the western side of Whitehill Drive.
33. Policy CTY8 cross-references with criterion (d) of Policy CTY14 'Rural Character' of PPS21. Policy CTY14 states that a new building will be unacceptable where (d) it creates or adds to a ribbon of development. Given that I have found that the appeal proposal would create or add to a ribbon of development, the proposed building would fail to meet criterion (d) of Policy CTY14. I therefore conclude that

the appeal proposal would be contrary to Policy CTY8 of PPS21 and criterion (d) of Policy CTY14. Thus, the third parties' concerns in this regard are sustained.

34. In respect of the third parties' other concerns, I am not persuaded that the design and materials of the proposed building would be unsympathetic given that its finish reflects those buildings found on farms in the countryside. The proposed building would be over approximately 100 metres away from the nearest dwelling (No. 17). Due to the significant separation distance between both properties, I am content that the appeal proposal would not be overbearing or dominant on the amenity of the neighbouring dwelling (No. 17).
35. No evidence was presented to demonstrate that the appeal proposal would have a detrimental impact on the amenity of residential dwellings in terms of noise, odour and vermin. In any case, the Council raised no objections to the proposal in this regard subject to the imposition of a condition restricting the use of the building for storage purposes only. I am satisfied that such a condition would ensure that the amenity of neighbouring dwellings would not be adversely affected by odour and vermin nuisance.
36. The third parties expressed road safety concerns as they considered that traffic movements between both parts of the farm would increase. The Department for Infrastructure (DfI) Roads raised no objections to the proposal. The proposed access is positioned at an existing field gate towards the end of a dead-end road where the nearest dwelling is over 100 metres away. As the proposal is for one building that would be associated with the existing gaming bird business, I am not persuaded that the number of traffic movements would significantly increase or that there would be any prejudice to road safety. The third parties' concerns in this regard are not sustained.
37. The supporter of the proposal considered that the proposed building would increase the ability of the farm business to maintain higher standards of bio-security as well as improved separation of ovine and avian species. However, the appeal building is not proposed to house one specific species and I am not persuaded that the appeal proposal would assist bio-security standards given that the building is proposed to house machinery and feed.
38. The third parties argued that the appellant should be required to provide a farm management plan for the control of agricultural waste and to ensure that animals/game birds are not kept at the site, and that air quality is fully protected. A condition restricting the building to storage use would overcome any third parties concerns in this regard. The third parties also stated that the subject field has problems with flooding. However, no substantive evidence was presented that demonstrated that the site is within a floodplain or is affected by surface water flooding.
39. The appellant alleged that one of the third parties has carried out unauthorised development within the vicinity. However, this matter falls outside the remit of this appeal and is for the local Council to address.



40. All in all, as I have not found that the appeal proposal would be acceptable in principle and no persuasive overriding reasons were advanced that justified why the development is essential and could not be located in a settlement, the appeal proposal offends Policies CTY1 and CTY12 of PPS21 and this is determining. The appeal must therefore fail.

This decision is based on:

- Drawing 01/1 at scale 1:2500 stamped received by the Council on 08 March 2020
- Drawing 02/2 at scale 1:500 stamped received by the Council on 22 June 2020; and
- Drawing 03 at scale 1:100 stamped received by the Council on 30 December 2019.

**COMMISSIONER B STEVENSON**

## **List of Documents**

Planning Authority: -

“A” Statement of Case  
Antrim and Newtownabbey Borough Council

“B” Rebuttal Statement  
Antrim and Newtownabbey Borough Council

Appellant: -

“C” Statement of Case  
CMI Planning Ltd

“D” Statement of Case  
Mr & Mrs Heatley

Third Parties: -

“E” Statement of Case  
Mr J McAteer

“F” Rebuttal Statement  
Mr J McAteer

“G” Statement of Case  
Mr B McKeown

“H” Statement of Case  
Jos. C. M. Hughes