

Appeal Decision

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Appeal Reference:	2021/A0053
Appeal by:	Mr Michael Cleland.
Appeal against:	The refusal of full planning permission.
Proposed Development:	Increase in domestic curtilage and retention of store.
Location:	Land immediately to the north of 39 Florida Road Killinchy.
Planning Authority:	Ards and North Down Borough Council.
Application Reference:	LA06/2020/0709/F.
Procedure:	Written representations with Commissioner's site visit on 22 nd November 2022.
Decision by:	Commissioner Damien Hannon, dated 29 th November 2022.

Decision

1. The appeal is dismissed.

Reasons

2. The main issues in this appeal are whether the proposed development is acceptable in principle in the countryside, visual amenity and rural character.
3. The appeal site is designated as located in the countryside and outside any specific policy designation in the Ards and Down Area Plan 2015 (ADAP), the relevant statutory Local Development Plan (LDP). The LDP however contains no specific policies of relevance to this appeal. Furthermore, in respect of the appeal development, no conflict arises between the provisions of the Strategic Planning Policy Statement for Northern Ireland - Planning for Sustainable Development 2015 (SPPS) and those of retained policy. Consequently, the relevant policy context is provided by Planning Policy Statement 21 – Sustainable Development in the Countryside (PPS 21) and the Addendum to Planning Policy Statement 7: Quality Residential Environments, entitled 'Residential Extensions and Alterations' (the Addendum).
4. The appeal site is a rectangular plot of land with a frontage of approximately 60m onto Florida Road. It currently accommodates No 39, a single-storey, dash finished dwelling and a steel framed, metal clad shed measuring approx. 23m long, 9.4 wide and 5.4 in height, sited adjacent to and north of the dwelling. Permission is sought for the retention of this shed, the appeal building.
5. Reserved matters permission was granted for the dwelling at No 39 in 1986 reference (X/827/85) and the appellant argued that the original site included the area within which the appeal shed is now located. Were this the case, it could be argued that the lawful use of the entire appeal site is residential. However, while the

appellant provided a copy of the original decision notice, the relevant drawings were not provided. The Council stated that these drawings were no longer available. Aerial photographs supplied by the Council, although undated, showed No. 39 to have a defined curtilage and the land on which the appeal building is sited to be outside that curtilage and in agricultural use in conjunction with adjacent land. Also, a condition of the original permission for the dwelling required the planting of the site's northern boundary. During my site visit I saw no evidence of planting along the northern boundary of the appeal building. Furthermore, the appellant chose to make a planning application for an increase in domestic curtilage.

6. Taken in the round, the submitted evidence does not establish the lawful use of the part of the site on which the shed is sited to be residential. On the contrary I am persuaded, on the balance of probabilities, that the original appeal site excluded this piece of land. In this evidential context I judge the land on which the shed is sited to be agricultural.
7. The appellant argued that the shed was immune from enforcement action and submitted evidence in the form of a google map to support this assertion. While this photograph bears the date of August 2016, this annotation appears to a later addition as opposed to original. Notwithstanding this however, the appropriate vehicle for establishing whether the shed is immune from enforcement action is through a Certificate of Lawfulness of Existing Use or Development (CLEUD) pursuant to article 169 of the Planning Act (Northern Ireland) 2011. In the absence of such a CLEUD and given that the appellant's assertion regarding immunity was disputed, it would be inappropriate for me to decide, through this appeal, whether or not the building is lawful or to assume it to be lawful.
8. The appellant's agent referred to various letters from the Council and stated that his client was poorly advised. Copies of these letters were not volunteered, however it appears that the confusion arose over whether the shed benefitted from deemed consent and if not, whether the original application should have been for a domestic store or a farm building. I have no doubt that some level of confusion exists because the appellant, in his statement of case, refers to the shed being essential for the storage and maintenance of the appellant's farm machinery and equipment required to maintain the farmland and boundary treatment. Nonetheless, the appellant is professionally represented and the appeal before me relates to development comprising two elements, namely, an increase in domestic curtilage and the retention of a store.
9. The increase in domestic curtilage equates to the change of use of agricultural land in the countryside to residential use. Policy CTY 1 of PPS 21 sets out a range of types of development which in principle are considered acceptable in the countryside. The appeal site lies within a farm of some 8ha of arable land and one of the types of development specified in Policy CTY 1 as acceptable is agricultural development in accordance with Policy CTY 12. The appellant, however, presented no case to justify that residential development in the countryside, as proposed, fell within any of the categories deemed acceptable in principle in Policy CTY 1.
10. The appellant argued the proposal to qualify as acceptable under Policy CTY 1 as an extension to a dwelling house where this is in accordance with the Addendum to PPS 7. The Addendum provides an additional planning policy for the extension and/or alteration of a dwellinghouse, including single dwellings in the countryside.

The Addendum does not provide policy on the change of use of agricultural land in the countryside to residential use. Such development is covered by other policies. I have already concluded the existing building to be located on agricultural land and not within the residential curtilage of No. 39 and therefore the Addendum is not material to consideration of the proposal before me. However, the Council's fourth reason for refusal refers to Policy EXT 1 of the Addendum and in the interests of completeness and to allow the appellant full consideration of the issues raised, I shall provide an essentially hypothetical evaluation of the proposal against this policy.

11. Policy EXT 1 of the Addendum states that planning permission will be granted for a proposal to extend or alter a residential property where the scale, massing, design and external materials of the proposal are sympathetic with the built form and appearance of the existing property and will not detract from the appearance and character of the surrounding area. It also states that the guidance set out in Annex A will be taken into account when assessing proposals. Annex A guidance states that buildings within the residential curtilage, such as sheds, should be subordinate in scale and similar in style to the existing property, taking account of materials, the local character, and the level of visibility of the building from surrounding views. It adds that outbuildings located in front of the established building line can over-dominate the front of the property and detract from the street scene and will therefore generally be resisted.
12. No. 39 is a modest, single storey, dash finished dwelling. The substantial appeal building measures 23m long, 9.4m wide and 5.4m in height and is finished in metal cladding. Roadside and other vegetation provides considerable screening, which could be augmented by additional planting along the shed's northern boundary. Nonetheless, clear views of the dwelling and shed are available from points along Florida Road, including a stretch along the site frontage. When viewed from these points along Florida Road, the shed, which projects beyond the front building line of the dwelling, presents, not as subordinate in design or sympathetic in terms of materials, but as an over dominant and incongruous building with a commercial as opposed to a domestic character. I conclude that the shed, if it was within the residential curtilage of No. 39, would not comply with Policy EXT 1 of the Addendum. However, as I have earlier concluded that Policy EXT 1 is not material to consideration of the appeal proposal, I further conclude the Council's fourth reason for refusal, based on Policy EXT 1, to be misplaced and therefore not sustained.
13. Policy CTY 1 goes on to state that other types of development will only be permitted where there are overriding reasons why that development is essential and could not be located in a settlement, or it is otherwise allocated for development in a development plan. Obviously, an extension to a residential curtilage would adjoin the existing curtilage as opposed to being located in a separate settlement. However, the appeal site has a countryside designation in the LDP and the appellant advanced no convincing case that the change of use of this plot of agricultural land to residential, was essential. In these circumstances, I conclude the proposal not to be acceptable in principle in the countryside and the Council's first reason for refusal based on Policy CTY 1 is sustained.
14. Policy CTY 13 of PPS 21 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 adds that a new building will be

unacceptable where it is a prominent feature in the landscape, or the design of the building is inappropriate for the site and its locality. The Council stated that the building, because of its design, would constitute a prominent feature that would be inappropriate for the site and its locality and would fail to be visually integrated into the surrounding landscape.

15. I consider the existing shed, while not residential in appearance, to be of a design that is common in the countryside. It is therefore appropriate to both its countryside locality and the site that is an agricultural field adjacent to a single rural dwelling. From the evidence presented and my own observations, I consider that, with additional planting along the northern boundary, the building would appear adequately integrated into the surrounding landscape. The proposal would comply with Policy CTY 13 and the Council's second reason for refusal based thereon is not sustained.
16. Policy CTY 14 of PPS 21 deals with rural character and 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. It adds that a proposal for a new building must meet several stated criteria. The Council objected on the grounds that the proposal would damage rural character by creating a ribbon of development contrary to criterion (d) of Policy CTY 14.
17. I observed several buildings in a cluster fronting Florida Road some 80m north of No 39. These comprised a new dwelling, an original dwelling (No. 31) and a partially demolished outbuilding. Both the new and original dwellings had a frontage onto Florida Road and were visually linked with No 39 when viewed on approach along the road in either direction. No. 39, 31 and the new dwelling form a ribbon of development along Florida Road, to which the proposed shed, also with a road frontage, adds. I consequently conclude that the existing shed would have a detrimental impact on rural character and that the Council's third reason for refusal based on Policy CTY 14 is sustained.
18. The Council's objection in principle and reasons for refusal that I have found sustained are determining in this case.

This decision is based on the following drawings received by the Council on 19th August 2020:-

1:1250 scale Location Plan numbered 01.

1:500 scale Site Layout numbered 02.

1:100 Plans & Elevations entitled 'Domestic Shed Sketch Plans' numbered 03.

COMMISSIONER DAMIEN HANNON

List of Documents

Planning Authority:-

COU1 Statement of Case
COU 2 Rebuttal

Appellant:-

APP1 Statement of Case
APP 2 Rebuttal