
Appeal Reference:	2021/A0143
Appeal by:	Mr Alan Milne
Appeal against:	The refusal of full planning permission.
Proposed Development:	Retention of replacement agricultural store.
Location:	100m North of 245 Armagh Road, Tullyhappy, Newry
Planning Authority:	Newry, Mourne and Down District Council
Application Reference:	LA07/2020/0518/F
Procedure:	Written representations and Commissioner's site visit on 3 September 2024
Decision by:	Commissioner Paul Duffy, dated 11 September 2024

Decision

1. The appeal is dismissed.

Reasons

2. The main issues in this appeal are whether the development is acceptable in principle in the countryside, visually integrates into the landscape and detrimentally impacts on rural character.
3. Section 45(1) of the Planning Act (NI) 2011 (the Act) requires the Commission, in dealing with an appeal, to have regard to the local development plan, so far as material to the application, and to any other material considerations. Section 6(4) of the Act states that where regard is to be had to the Local Development Plan (LDP), the determination must be made in accordance with the Plan unless material considerations indicate otherwise.
4. The Banbridge, Newry and Mourne Area Plan (BNMAP) operates as the relevant LDP and in that plan, the site is located within the countryside. However, as the rural policy in the plan is now outdated, having been overtaken by regional policy for development in the countryside, no determining weight can be attached to it.
5. The Strategic Planning Policy Statement (SPPS) sets out transitional arrangements that will operate until a Plan Strategy for a Council area is adopted. In this Council area, no Plan Strategy has been adopted yet. As such, during the intervening transitional period, the SPPS retains certain Planning Policy Statements (PPSs) including PPS21 – 'Sustainable Development in the Countryside' (PPS21). The SPPS sets out the transitional arrangements to be followed in the event of a conflict between it and retained policy. Any conflict arising between the SPPS and any policy retained under the transitional

arrangements must be resolved in favour of the SPPS. As no such conflict arises in this instance, the retained policy contained in PPS21 applies.

6. Policy CTY1 of PPS 21 identifies a range of types of development which, in principle, are considered acceptable in the countryside. One of these allows for agricultural and forestry development in accordance with Policy CTY 12.
7. The appeal site is located off the Armagh Road and is situated to the rear of No. 247 Armagh Road, which is a single storey dwelling which fronts onto the road. Although situated to the rear of no. 247, and abutting its domestic outbuilding, the appeal building is accessed from a separate laneway which serves no. 245, a large modern detached two storey dwelling. No. 245 has extensive landscaped gardens. To the rear of the appeal building, a small laurel and leylandii wooded area forms a boundary buffer between the two dwellings. The appeal building opens into a courtyard which is set within the larger extensive landscaped garden belonging to No. 245 Armagh Road.
8. The first matter to determine is whether the development is on an active and established holding. Paragraph 5.56 of PPS 21 indicates that for the purpose of Policy CTY 12, the determining criteria for establishing whether there is an active and established farm business will be that set out in Policy CTY 10 of PPS 21. The appellant is required to provide the farm's business ID number along with other evidence to prove that the farm business is currently active and has been established over the required six-year period.
9. The Department of Agriculture, Environment & Rural Affairs (DAERA) consultation response dated 20 June 2020 confirms that a farm business ID was allocated on 28 April 2005. Although this was allocated more than six years ago, DAERA advised that no payments have been claimed through the Basic Payment Scheme or Agri Environment Scheme in each of the last six years. They also say that the application site is not on land for which payments are currently being claimed. In the comments section of the consultation, it states: '*Business ID on P1C last claimed in 2014*'. The farm map submitted for consideration was dated 2013'.
10. As the consultation response from DAERA and the farm map supplied did not demonstrate that the farm business was currently active, the Council asked for additional verifiable evidence such as accounts, herd books, insurance or rates information. A timeline of 10 days was provided for the submission of the additional information. As no further information was forwarded, the Council concluded that the farm business was not currently active or established and that the appellant had not demonstrated that the building was necessary for the efficient use of the agricultural holding.
11. The appellant has made the case that planning permission is being sought to replace a longstanding agricultural building, which was in situ in the same location as the appeal development since the late 1960s, until its roof blew off in a storm. Attached to the appellant's Statement of Case are Google Earth images which include an ariel and street view images of what is depicted as an agricultural building. In the appellant's view, the previous agricultural building on the site is a material consideration of significant relevance and therefore it is unreasonable of the council to have disregarded it. In support of his position, he referred to a

pervious decision by the Council whereby considerable weight was attached to the fact that an agricultural shed was previously on a site (LA07/2018/1284/F).

12. Given that the application is specifically described as “retention of replacement agricultural store”, and this was not disputed by the Council, I agree that this is a relevant material consideration. Nevertheless, the fact that the application is for the retention of the replacement store on the footprint of the previous building means that the original building was demolished. Accordingly, limited weight is attached to the replacement of a building which no longer exists.
13. The appellant is not a full-time farmer. However, it is claimed that he harvested hay in the vicinity of the appeal site, which he then stored in the agricultural building that once stood in the location of the replacement store. The bales were then utilised by a neighbour and the appellant’s brother to feed their horses. This continued until the roof blew off in a storm. As the building had no roof, the appellant has had nowhere to store the bales of hay since 2018, but he continued to maintain the land in a manner that makes it suitable for cultivating and will continue to harvest hay as soon as he has a suitable building to store the bales.
14. The evidence submitted to support the above includes:
 - Google Earth Images depicting the previous agricultural building dated June 2015 & Google Street View Images dated March 2011 (Appendix 1).
 - Planning Decision LA07/2018/1284/F (Appendix 3)
 - Letter of Support (Appendix 5)
 - Photographs of harvesting dated August 2015 (Appendix 6)
 - Appeal Decision 2019/A0035 (Appendix 7)
 - Appeal Decision 2019/A0016 (Appendix 13)
15. The Google images are inconclusive and of themselves do not demonstrate active and established farming for the required 6-year period. These images only show a modest building on the site, which would tie in with the letter of support which advises that the original building was originally used as a chicken shed. The DAERA map is out of date and given that the appellant does not claim a Single Farm Payment, it does not assist in demonstrating that the business is currently active and established. In respect to the letter of support, which is admissible as it deals with the matter in hand which was also before the Council during its determination process, it does not provide any tangible evidence of active farming over the required period. The photographs of land being harvested are dated 2015. This lies outside the required period and therefore does not assist the appellant’s case.
16. The appellant owns the adjacent tractor business. It is claimed that he uses salaried employees to assist with maintaining the land in good agricultural condition, by erecting and repairing fencing, by boundary planting, by cutting the grass and by putting in place an improved access. However, no evidence in the form of receipts or invoices for such work have been provided as would normally be the case to demonstrate that land is being maintained in a state that makes it suitable for grazing and cultivation. Furthermore, from my site inspection, I noted that the surrounding land within the appellant’s ownership is part of a landscaped garden associated with No. 245 Armagh Road, rather than agricultural land. In the

evidential context, it has not been demonstrated that the farm business is currently active and has been established for the required six-year period.

17. Appeal 2019/A0035 was referred to, regarding the test posed by criterion (a) of Policy CTY 10. I agree that it is not whether an applicant is an active farmer, but whether the farm business is active and established for at least six years. Given that it has not been demonstrated that the farm business is currently active and established, this appeal decision does not assist the appellant's case. Similarly, Appeal 2019/A0016 can be distinguished from this appeal in that the farm business met the policy requirements of Policy CTY 10 of PPS 21.
18. Notwithstanding the above, in cases where a new building is proposed appellants will need to provide sufficient information to demonstrate that there are no suitable buildings on the holding that can be used. The appellant owns the adjacent tractor business which comprises of seven buildings. Although it was argued that the tractor business was outside the farm holding, information has been submitted that rules out these buildings. Notwithstanding the Council's concerns around this evidence, given the relatively modest size of the appeal building and the number of existing buildings associated with the tractor business, I am not persuaded that space could not be found within one of these buildings and it adapted accordingly to facilitate the storage of hay.
19. It was also argued that as the appeal proposal represents the first building on the farm holding, the exceptional test of policy CTY 12 is engaged, in that, consideration may be given to an alternative site away from existing farm buildings where it is essential for the efficient functioning of the business, or there are demonstrable health and safety reasons. Having considered the evidence both individually and cumulatively, I have found that the fundamental requirements of Policy CTY 12 are not met, it follows that the building is not essential for the efficient use of the holding and that the exceptional test cannot be engaged.
20. For the above reasons, I have found that the appeal building is not necessary for the efficient use of the agricultural holding. Accordingly, the second reason for refusal in relation to policy CTY 12 is sustained.
21. The appellant is of the view that the Council has been inconsistent in its assessment of similar planning applications and has identified an example of where they did not apply the exceptional test but gave determining weight to the fact that the building was replaced. The weight to be apportioned to material considerations is a matter for the decision maker, and in that case the Council was satisfied that the farm business was currently active and established and that the building was necessary for the efficient use of the holding. Therefore, the Council was entitled to attach determining weight to the previous farm building. That case is clearly distinguishable to this appeal.
22. The third, fourth and fifth reasons for refusal relate to visual integration, rural character and ribbon development. In summary, the council is of the view that the appeal development is contrary to policies CTY 12, 13 & 14 as the building fails to visually integrate into the rural landscape because it is not sited beside existing farm buildings, the site does not have established boundaries to provide a suitable

degree of enclosure, the detailed design of the building is inappropriate, it creates ribbon development and its ancillary works damage rural character.

23. The appeal building is sited immediately adjacent to the dwelling and outbuilding at No. 247, which are under the appellant's control. The rear of these buildings is defined by mature vegetation which provided a backdrop which visually integrates the development into the landscape. The location of the appeal building being sited to the rear of the existing buildings means that it is not a prominent feature in the landscape, but largely screened from public view.
24. In respect to the detailed design of the appeal building, it has the characteristics of a Coach House, rather than an agricultural building, particularly given its relationship with the ornamental courtyard which it opens onto. However, as it is largely screened from public view, I do not find the design to be unacceptable. For the above reasons, the council's objections on policy CTY 12 and CTY 13 in relation to design, prominence and visual integration and not sustained and accordingly refusal reasons three and four and not sustained.
25. The council also raised concerns in respect to the impact the ancillary works have on rural character. Given that the courtyard and the entrance walls and pillars are subject to a separate planning application and are not included with the drawings before me, they do not form part of my consideration, which is concerned only with the retention of the replacement agricultural store. The inclusion of the ancillary works within the refusal reason is therefore misplaced.
26. Turning to ribbon development, Policy CTY 14, rural character is cross referenced with Policy CTY 8, Ribbon Development. In this case, the appeal building is located within the grounds of no. 245, which has frontage to the public road. The appeal building is located to the rear of the outbuilding associated with No. 247 and is visually linked with both number 247 and its associated outbuilding. Given that the appeal building is visually linked with No. 247 and is located within the landscaped grounds of no. 245, both of which have common frontage to the road, the development creates a ribbon of development. As such, the Council has sustained its fifth reason for refusal in so far as it relates to ribbon development.
27. As the Council has sustained its second and fifth reason for refusal to the extent specified, in the evidential context the appellant has not provided persuasive evidence to demonstrate that the appeal development is essential at this rural location, the council has therefore also sustained its first reason for refusal in relation to policy CTY1. Accordingly, the appeal must fail.
28. This decision is based on the following drawing:-
 - 01 Existing and Proposed Plans & Elevations, Site Layout & Site Location Map, date stamped by the Council 1 April 2020.

COMMISSIONER PAUL DUFFY

List of Documents

Planning Authority:-	“A”	Statement of Case
	“B”	Rebuttal
Appellant(s):-	“C”	Statement of Case
	“D”	Rebuttal