

Appeal Decision

Appeal Reference:	2021/A0179
Appeal by:	Mr Ryan Kelly
Appeal against:	The refusal of outline planning permission.
Proposed Development:	Farm dwelling detached garage and site works
Location:	Adjacent to 104 Downpatrick Road, Ballynahinch, Co. Down
Planning Authority:	Newry, Mourne & Down District Council
Application Reference:	LA07/2021/0598/O
Procedure:	Written Representation with Commissioners site visit 10 June 2024.
Decision by:	Commissioner Paul Duffy, dated 12 June 2024,

Decision

1. The appeal is dismissed.

Reasons

2. The main issues in this appeal are whether the appeal proposal is acceptable in principle in the countryside, visual integration and impact on rural character.
3. Section 45(1) of the Planning (Northern Ireland) Act 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 in making any determination under the Act, regard is to be had to the LDP, the determination must be made in accordance with the plan unless material considerations indicate otherwise.
4. The Ards and Down Area Plan 2015 (ADAP) operates as the LDP for the area within which the appeal site lies. In it, the appeal site is within the countryside and outside of any settlement limit. The ADAP policies relevant to the countryside are now outdated, having been overtaken by regional policies for rural development and no determining weight can be attached to them. There are no other provisions in ADAP that are material to the determination of the appeal.
5. The Strategic Planning Policy Statement for Northern Ireland 'Planning for Sustainable Development' (SPPS) sets out the transitional arrangements that will operate until such times as the local Council adopts a Plan Strategy for the whole of the Council area. As no Plan Strategy has been adopted for the Newry, Mourne and Down District Council area, both the SPPS and other regional policies apply.

In line with the transitional arrangements, as there is no conflict or change in policy direction between the provisions of the SPPS and retained policy contained in Planning Policy Statement 21 - Sustainable Development in the Countryside (PPS 21), PPS21 policy provisions remain applicable to the proposed development.

6. PPS21 therefore provides the planning policy context for assessing the proposal. Supplementary planning guidance for buildings in the countryside is set out in the document 'Building on Tradition' – A Sustainable Design Guide for Northern Ireland Countryside (BoT).
7. Policy CTY 1 of PPS21 is titled 'Development in the Countryside'. It indicates that there are a range of types of development considered to be acceptable in principle in the countryside and that will contribute to the aims of sustainable development. It goes on to say that planning permission will be granted for an individual dwelling house on a farm in accordance with Policy CTY 10. It follows that if the development complies with Policy CTY 10, it will also comply with Policy CTY 1 of PPS 21.
8. The appeal seeks outline permission for a farm dwelling and detached garage. The site comprises of a rectangular shaped plot located directly adjacent to 104 Downpatrick Road, Ballynahinch. The site comprises the front corner of a larger agricultural field. The front roadside boundary is defined by a grass verge and native species hedgerow with a timber ranch style fence set behind. The boundary adjacent 104 Downpatrick Road, comprises of mature leylandii trees. The remaining site boundaries are undefined. The site is along the road front and sits above road level within a larger undulating host field which rises gently away from the road in a northerly direction. The surrounding area is rural in character set in a drumlin landscape. The adjacent property No. 104 is a 2-storey detached farm house with outbuildings to the rear.
9. Policy CTY 10 of PPS 21 indicates that planning permission will be granted for a dwelling house on a farm where all of the following criteria are met:
 - (a) the farm business is currently active and has been established for at least 6 years;
 - (b) no dwellings or development opportunities out-with settlement limits have been sold off from the farm holding within 10 years of the date of the application; and
 - (c) the building is visually linked or sited to cluster with an established group of buildings of the farm.
10. New houses on farms will not be acceptable unless the existing farming business is both established and currently active. On the P1C form accompanying the planning application, the appellant has indicated that they have a DAERA Farm Business Identification Number, which was allocated in 1993. A customer ID number has also been provided. In the consultation response from the Department of Agriculture, Environment and Rural Affairs dated 27 April 2021, the Department has confirmed that a Farm Business ID was allocated in 1993 for a Category 1 farm business. However, the farm business has not claimed payments through the Basic Payment Scheme or Agri Environment Scheme in each of the last 6 years, nor is the site on land which payments are currently being claimed by the farm business. In the comments section of the consultation

response, it is noted that: *“Proposed site located on land associated with another farm business”*.

11. In light of DAERAs consultation response, the Council concluded that the appellant’s farm business was no longer active and that the appeal site currently formed part of another third-party farm business and therefore criterion (a) of Policy CTY 10 was not met meaning he cannot qualify for a farm dwelling.
12. The appellant disagreed and provided additional supporting information in the form of receipts to demonstrate that the farm business had been active over the required period. The receipts range from May 2014 through to May 2021 and cover a variety of transactions from the hire of a slurry spreading tanker, mowing of hay, bail wrapping, seeds, nails railings and other miscellaneous equipment. However, the appellant has acknowledged that the appeal site is let in conacre to a third party advising that very few farms are entirely self-contained and rely on leasing, renting and employing third parties for example.
13. The appellant has provided no information on the lease agreement. DAERA have confirmed that the proposed site is on land associated with another farm business, which suggests that this other business is currently active. The policy test is that the farm business is currently active and has been established for at least 6 years and not whether the appellant is an active farmer. The policy refers to the farm business (singular). As the appeal site is associated with another business, and no detail has been provided of the second farm business, in this evidential context, I must conclude that the proposal fails to comply with criterion (a) of policy CTY 10.
14. Criterion (b) requires that no dwellings or development opportunities have been sold off the farm holding within 10 years of the date of the application. The appellant has confirmed that no dwelling or development opportunities have been sold off the farm holding within 10 years of the date of the application. However, the Council noted that the farm maps submitted were not formal DAERA maps with a business ID number, presumably because no Single Farm Payments have been claimed on the land, accordingly the Council were unable to verify this matter. Although Land and Property Service Maps were also submitted to the Council to confirm that Messer’s Patrick and Kevin Kelly are still in ownership of these lands, given the fact that the appeal site is associated with another farm business and no details have been provided of that business, the Council have been unable to confirm if development opportunities have been sold off from the farm holding. In the absence of any information on this second farm business associated with the appeal site, I therefore conclude that the proposal fails to comply with criterion (b) of policy CTY 10. No objections have been raised in relation to Criterion (c).
16. Policy CTY 10 also requires that the appeal site complies with policies CTY 13 & CTY 14 of PPS 21. In respect to this, the appellant has highlighted appeal 2012/A0270 and the Commission’s approach to the relevance or otherwise of policies CTY 13 & CTY 14 when assessing applications for farm dwellings under policy CTY 10. In that appeal decision the Commission took the view that policies CTY 13 & CTY 14 were only engaged in the exceptional circumstances identified. Given that exceptional circumstances do not apply in this case, the appellant is of the view that policies CTY 13 & CTY 14 are not engaged.

17. Commission decision 2012/A0270 was taken in June 2013 and the Commission's position has changed since given the 'Hyde' judgement which was published in January 2014. While the Hyde case referred to different policies and their inter-relationship, the salient points for this appeal are that neither Policy CTY 1 nor CTY 10 are self-contained and as policies CTY 13 and CTY 14 set out the criteria for judging the acceptability of new buildings in the countryside, they are therefore relevant.
18. Policy CTY 13 – Integration and Design of Buildings in the Countryside, 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. The Council is of the view that given the site is on higher ground than the adjacent public road and that two boundaries are undefined, the proposal would fail to integrate, particularly when travelling southeast along the Downpatrick Road. The appellant on the other hand is of the view that given the site has two established boundaries, including the roadside boundary which would be unaffected by sight splays, any perceived failure of the proposal to meet some of the integration requirements are outweighed by the nature of the site to achieve the level of integration required for farm dwellings under Policy CTY 10.
19. The appeal site is screened when travelling from the southeast by the existing development and vegetation associated with No. 104 & 106 Downpatrick Road. When approaching from this direction the proposal would be visually integrated. However, when approaching from the opposite direction and although set behind a roadside hedge, the elevated position of the site relative to the public road and the lack of two established boundaries means that the site is unable to provide a suitable degree of enclosure for the proposal to integrate it into the landscape. This would remain the case even if the size of the site was reduced to leave an area of undeveloped agricultural land between the site and the road. The Council has therefore sustained its second reason for refusal.
20. Policy CTY 14 – Rural Character, identifies criteria (a) to (e) where a new building in the countryside will be unacceptable. The Council is of the view that the proposed development is unacceptable referring to criteria (b) & (d), in that if approved, it would create a ribbon of development which would result in a suburban style build-up of development. The appellant however is of the view that the thrust of PPS 21 is to group new development with existing built commitments in the landscape, and in this case the proposal would visually link with existing development. Therefore, when considering the relevant policy and guidance on this matter, the perceived failure of the proposal to meet some of the requirements of Policy CTY 14 are outweighed by its ability to achieve the level of visual linkage and clustering required for farm dwellings under Policy CTY 10.
22. In respect to ribbon development, Policy CTY 14 (d) refers to Policy CTY 8, which states that planning permission will be refused for a building which creates or adds to a ribbon of development. Paragraph 5.32 of its Justification and Amplification text states that ribbon development is detrimental to the character, appearance and amenity of the countryside. The existing development at this location comprises No. 104 a two-storey detached house, a large garage and No. 106 a two-storey detached house. The appeal site is directly adjacent to No. 104

and as such any new building on the appeal site would extend this road frontage development and result in an unacceptable suburban style build-up of development and create a ribbon of development, which is contrary to policy CTY 8 and criteria (b) & (d) of Policy CTY 14. The council has therefore sustained it third reason for refusal.

23. The appellant supplied several case studies which he considered supported his position. However, in these cases, either the principle of a farm dwelling had been established or there was no second business associated with the site and therefore they are not directly comparable with the current case.
24. Even if I had found that the farm business was currently active and established and criterion b of Policy CTY 10 was met, the site-specific characteristics of the site in relation to visual integration and rural character are considered unacceptable. The Council has therefore sustained all three reasons for refusal, and accordingly, the appeal must fail.

COMMISSIONER PAUL DUFFY

List of Documents

Planning Authority:- Newry Mourne & Down District Council
Statement of Case, dated 22 March 2022

Appellant(s):- O'Neill Architecture
Statement of Case, dated 6 April 2022
Response to Statement of Case, dated 16 May 2022