

Appeal Decision

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Appeal Reference:	2021/A0200.
Appeal by:	Mr David Og Downey.
Appeal against:	The refusal of full planning permission.
Proposed Development:	Off-site replacement dwelling and associated site works.
Location:	101m north-west of No. 60 Lower Foughill Road, Jonesborough, Newry.
Planning Authority:	Newry Mourne & Down District Council.
Application Reference:	LA07/2021/0956/F.
Procedure:	Hearing on 17 October 2022.
Decision by:	Commissioner Mark Watson, dated 15 March 2023.

Decision

1. The appeal is dismissed.

Reasons

2. The main issue in this appeal is whether or not the appeal development is acceptable in principle.
3. The Banbridge, Newry & Mourne Area Plan 2015 (BNMAP) operates as the statutory local development plan for the area the site is in. In it, the appeal site lies within the countryside. The BNMAP offers no specific policy or guidance in respect of the appeal development and is not material. There is no conflict or change in policy direction between the provisions of the Strategic Planning Policy Statement for Northern Ireland (SPPS) and those of Planning Policy Statement 21 – Sustainable Development in the Countryside (PPS21) in respect of the appeal proposal. The policy provisions of PPS21 remain applicable to the proposed development.
4. The appeal building is an elongated rectangular building situated on the western side of the Lower Foughill Road. It is divided into two sections, with approximately two thirds of it given over to a cottage, with the adjoining section used as a store. It is finished in stone and covered in rough render painted white. It has a pitched roof covered in corrugated metal sheeting. There are two chimneys along the ridge. The building is set back from the roadside slightly and set within a walled concrete yard, adjacent to a small agricultural shed. The appeal building sits on sloping land higher than road level. There is a grassed field adjacent and north which forms the majority of the appeal site. There is a mobile home situated to the west and rear of the appeal building. No. 60, a large two storey dwelling, lies some distance to the south on slightly higher land relative to the appeal building.

5. The appeal development seeks an off-site replacement dwelling to be sited in the adjacent field to the east of the appeal building. It would be a sizeable two storey dwelling sited approximately 43m to the north-west of the original building. The new dwelling would possess neo-Georgian design cues and a hipped end roof. It would be finished in smooth render and blue / black roof tiles. Access would be taken from a new access point and laneway at the northern end of the frontage of the host field. From the proposed plans the curtilage would comprise approximately the eastern half of the host field in question.
6. Policy CTY1 of PPS21 states that there are a range of types of development which are considered to be acceptable in principle in the countryside and that will contribute to the aims of sustainable development. It goes on to state that planning permission will be granted for an individual dwelling house in the countryside in six cases. One of these is a replacement dwelling in accordance with Policy CTY3. It follows that if the development complies with Policy CTY3 it will also comply with Policy CTY1 of PPS21.
7. Policy CTY3 of PPS21 states that planning permission will be granted for a replacement dwelling where the building to be replaced exhibits the essential characteristics of a dwelling and as a minimum all external structural walls are substantially intact. In this case, the Council accepted that the appeal building had been a dwelling, but objected in that it had previously already been replaced. Policy CTY3 states that in cases where the original building is retained, it will not be eligible for replacement again. It goes on to state that equally, this policy will not apply to buildings where planning permission has previously been granted for a replacement dwelling and a condition has been imposed restricting the future use of the original building, or where the building is immune from enforcement action as a result of non-compliance with a condition to demolish.
8. Application ref. P/1980/0827 granted outline permission for a replacement dwelling on 13 October 1980. No conditions pertaining to the original building were included in that permission. A subsequent application ref. P/1981/0305/F granted full permission for the erection of a replacement farmhouse on 11 June 1981. The Appellant accepted that No. 60 Lower Foughill Road was built on the foot of permission P/81/0305/F, but that no condition was put on, either restricting use of the original building or requiring its demolition. A further planning application to replace the appeal building (ref. P/2008/0782/O) was granted on 17 September 2008. Again, no condition pertaining to the demolition or otherwise of the original building was imposed.
9. The Appellant considered the appeal building to be eligible for replacement as no condition requiring its demolition or restriction on its use had been imposed on any of the permissions in question. The Council stated that the 2008 application was considered under the auspices of draft PPS 14 – Sustainable Development in the Countryside (dPPS14). From the submitted evidence, Policy CTY5 of dPPS14 placed emphasis on whether or not the residential use of a subject building had been abandoned, but made no reference at all to the matter of replacing a dwelling a second time. The then Department of the Environment (hereafter referred to as the Department) accepted that the residential use of the appeal building had not been abandoned and granted the permission. In any event, that permission was not implemented and has since lapsed.

10. Policy CTY3 of PPS21 applies to any current proposal for a replacement dwelling. The Appellant's representative stated that the prohibition under the policy restricting instances where the original building has been replaced and cannot be replaced again, applied only to non-listed vernacular dwellings as it was placed under the section entitled 'Non-listed Vernacular Dwellings'. Notwithstanding the location of this prohibition within the overall structure of the policy, I do not agree with this assessment. To accept that the prohibition on replacing a dwelling more than once would only apply to non-listed vernacular dwellings, would undermine the intent of the policy, allowing for instances where a building that did not fall into the category of non-listed vernacular could be replaced more than once.
11. Even if I were to accept the Appellant's argument that the prohibition applied only in respect of non-listed vernacular buildings, the appeal building to my mind falls into this category given its simple linear form, openings and materials. It therefore would not be eligible for replacement again even if accepting the Appellant's argument relating to the scope of the prohibition within Policy CTY3 on replacing a dwelling more than once.
12. The Appellant's representative considered that the first sentence of this prohibition against instances where the original building had been retained could not apply in this case. This was because the 1981 permission made no reference to the original building being retained as a non-listed vernacular building. It therefore followed, in his view, that the prohibition within this section of Policy CTY3 to replacing a dwelling which has previously been retained did not apply. The lack of reference in the previous permission to retaining the building could be due to the age of the permission in question, as it pre-dates PPS21, as do all of the permissions granted in respect of the appeal building.
13. The Appellant also suggested that in the case of the appeal development this part of Policy CTY3 could not apply as the previous permission did not specifically seek to retain the original building or incorporate it into the overall development scheme. Rather, the 1981 permission was silent on what is now the appeal building. However, it seems illogical that Policy CTY3 would allow for situations where the original building could be replaced again simply because the proposed development for an off-site replacement did not seek to sympathetically incorporate the original building into the new layout.
14. The Appellant's representative also considered that the second sentence of this section supported his position, in that no such condition on the original building had been imposed in the 1981 permission. However, as no such condition had been imposed, the second sentence cannot be engaged.
15. I am not persuaded that the planning history associated with the appeal building would justify its exclusion from the proper application of Policy CTY3. Irrespective of there having been no condition imposed in regard to the appeal building, it has nevertheless been previously replaced by No. 60 and is not eligible for replacement again.
16. The Appellant considered that the building still possessed residential use rights and could be made habitable and occupied once again. Whether or not this is the case and irrespective of what the Department may have accepted under application P/2008/0782/O or the Council's acceptance that the building remains a dwelling, the

proper mechanism to determine the status of the building is through the submission of a Certificate of Lawfulness of Existing Use or Development (CLEUD). The Appellant referred to the general thrust for renewal and upgrade of rural housing stock within PPS21. In the event of the granting of a CLEUD confirming the residential use status of the appeal building, it would be open to the Appellant to exercise his rights to upgrade the building and make it habitable, thereby contributing to the renewal and upgrade of rural housing stock.

17. The policy context under which the previous permissions were granted has since changed. Whilst it may be the case that no restrictive use condition or requirement to demolish the appeal building was imposed in the past due to the less stringent prevailing planning policy and the site's location within what was then 'rural remainder', i.e. countryside outwith any green belt or countryside policy area, that would not justify the granting of a further additional dwelling in the rural area when the appeal building has already been replaced with another building. It would not be in the public interest to permit the replacement of buildings more than once, undermining the purpose of extant planning policy.
18. Policy CTY3 of PPS21 requires that all proposals for a replacement dwelling will only be permitted where all of a series of five criteria are met. Surprisingly, the Council's case did not refer to these at all, thus in the evidential context of this appeal they are deemed to be met. However, for the reasons given above I find that as the appeal building has previously been replaced through the implementation of permission P/81/0305/F and erection of No. 60, it is not eligible to be replaced again. Accordingly the appeal development is contrary to Policy CTY3 read as a whole and the related provisions of the SPPS.
19. There are no overriding reasons why the appeal development is essential and could not be located in a settlement. As the appeal development does not meet Policy CTY3, it does not meet Policy CTY1 of PPS21, nor the related provisions of the SPPS. The Council's reason for refusal is sustained and the appeal must fail.

This decision is based on the following drawings submitted with the application:-

DRAWING NUMBER	TITLE	SCALE	DATE
40306-200 Rev PL1	Site Location Map & Existing Site Layout	1:2500 & 1:500	13/10/2021
40306-201 Rev PL1	Proposed Site Layout, Proposed Floor Plans & Elevations	1:500 & 1:100	13/10/2021

COMMISSIONER MARK WATSON

List of Appearances

Planning Authority:- Ms A Donaldson (NM & D DC)

Appellant:- Mr D Donaldson (Donaldson Planning)
Mr D Og Downey (Appellant)
Mr D Downey (Appellant's father)

List of Documents

Planning Authority:- 'A' Statement of Case (NM & D DC)

Appellant:- 'B' Statement of Case & Appendices (Donaldson Planning)