

PLANNING APPEALS COMMISSION

**THE PLANNING ACT (NORTHERN IRELAND) 2011
SECTION 58**

**Appeal by Mr Paul Elliott
against the refusal of outline planning permission for a proposed dwelling and
garage
at Approx. 40m East of 19 Greentown Road, Florencecourt, Enniskillen, BT92 1BU**

**Report
by**

Commissioner Rachel Taylor

Planning Authority Reference: LA10/2023/1504/O

Procedure: Written Representations

Commissioner's Site Visit: 10th May 2024

Report Date: 5th June 2024

1.0 **BACKGROUND**

1.1 Fermanagh & Omagh District Council received the application for Planning Permission on 8th March 2023. By notice dated 28th September 2023 the Council refused permission giving the following reason:

1. **The proposal is contrary to Strategic Policy SP01 – Furthering Sustainable Development and Policy DE03 – Sustaining Rural Communities and Policy HOU11 – Dwelling on a Farm Business in that it has not been demonstrated that the farm business is currently active and has been established for at least 6 years.**

1.2 The Commission received the appeal on 10th October 2023 and advertised it in the local press on 25th October 2023. No representations were received.

2.0 **SITE AND SURROUNDINGS**

2.1 The site is located on a parcel of land directly east of number 19 Greentown Road, Florencecourt, Enniskillen. It is relatively square in shape and is part of a larger agricultural field. The site is accessed off an existing agricultural track and field gate to the south west directly onto Greentown Road.

2.2 The appeal site is grassed and is moderately sloping in nature, falling in a northerly direction. The northern, western and southern boundaries are defined by mature field hedging interspersed with trees. The western boundary also forms the site boundary of number 19 Greentown Road and there are two field access gates from the field, directly into the yard of number 19 and its outbuildings. The eastern boundary of the appeal site is undefined.

2.3 The dwelling at 19 is a two storey rural farm house which faces north. There is a red barrel roofed agricultural shed to the south of the dwelling and a number of linear outbuildings attached to the main dwelling to its east and west. To the north of the dwelling are another number of smaller agricultural outbuildings all within the curtilage of number 19.

2.4 The surrounding land use is primarily agricultural in nature with some single dwellings. There are three dwellings set at varying distances from the roadside on the western side of Greenmount Road in close proximity to the appeal site, ranging from single storey to two storey in height with a mixture of pitches and hipped roofs.

3.0 **PLANNING AUTHORITY'S CASE**

3.1 The appeal site is located approximately 40m East of number 19 Greentown Road outside the settlement limits of Florencecourt. The site lies on the eastern side of the minor public road and is accessible via a field gate and hardcore gravel lane that runs alongside a mature hedge. The lane continues in a north easterly direction and provides access to a large agricultural field. The field is adjacent to an existing two storey dwelling and group of agricultural buildings, these are identified as being within the control/ownership of the applicant. The site is relatively flat and is defined with mature trees and hedging along the field boundaries. The site is identified on the farm maps submitted with the application.

- 3.2 The eastern boundary as defined by the red line is undefined on the ground. The site is not located within any environmental designations, nor is it in an Area of High Scenic Value.
- 3.3 In terms of planning history, application LA10/2018/1569/F was approved for a 2-storey replacement dwelling from the same address and same applicant as the appeal proposal. The time limit for development to expire is 29/04/2024. The new dwelling will sit on the same footprint as the existing farm dwelling and within the permission the existing agricultural buildings are indicated to be demolished.
- 3.4 In terms of assessment against the Development Plan, as required by Section 45 Part (1) where an application is made for planning permission, the Council, in dealing with the application, must have regard to the local development plan, so far as material to the application, and to any other material considerations, and may grant planning permission, either unconditionally or subject to such conditions or may refuse planning permission.
- 3.5 On 16 March 2023, the Council adopted the Fermanagh and Omagh District Council Local Development Plan 2030 - Plan Strategy. In line with the transitional arrangements as set out in the Schedule to the Local Development Plan Regulations 2015 (as amended) the Local Development Plan now becomes a combination of the Departmental Development Plan (DDP) and the Plan Strategy (PS) read together.
- 3.6 In this application the Fermanagh Area Plan 2007 is the relevant DDP. In accordance with the legislation any conflict between a policy contained in the DDP and those of the Plan Strategy must be resolved in favour of the Plan Strategy.
- 3.7 In the DDP, the site is located in the countryside. The specific policies in the DDP and within Departmental Planning Policy Statements, for development outside of settlement limits, would have been in regional policy.
- 3.8 In accordance with paragraph 1.9 of the Strategic Planning Policy Statement (SPPS), as the Council has adopted its Plan Strategy, existing policy retained under the transitional arrangements have ceased to have effect in the Council District and shall not be material from that date (16 March), whether the planning application has been received before or after that date.
- 3.9 The Plan Strategy provides a plan-led policy framework for making day-to-day decisions to help Fermanagh and Omagh District Council deliver sustainable development. In determining planning applications, in accordance with the legislation, SPPS and PS, sustainable development should be permitted, having regard to the development plan and all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance. In practice this means that development that accords with the development plan should be approved and development that conflicts with the development plan should be refused, unless other material considerations indicate otherwise.
- 3.10 The appeal development does not offend Policies DE01, DE02, DE04 and DE05.

- 3.11 DE03 – Sustaining Rural Communities. The site is in the countryside but outside a Special Countryside Area (SCA). In Policy DE03 the Council will support a range of types of development in the countryside which sustain rural communities while protecting and improving the environment. Details of these are set out in the Policy. Under the heading ‘Housing Development’ planning permission will be granted for an individual dwelling house in the country in a number of circumstances. Policy DE03 also states that all proposals for development in the countryside must comply with the following Development and Design policies; policies DE04 (Integration and Design of Buildings in the Countryside) and DE05 (Rural Character); and all development proposals for buildings in the countryside must cluster, consolidate and group new development with existing established buildings.
- 3.12 The site is beside an existing dwelling and outbuildings. Although it would cluster and consolidate with these existing established buildings, the dwelling fails to meet the other relevant policy tests in the Plan Strategy for the reasons listed below and is contrary to Policy DE03.
- 3.13 Policy HOU11 – Dwelling on a Farm Business. Under Policy HOU11 planning permission will be supported for a new dwelling house where it meets the criteria.
- 3.14 The applicant has provided receipts and a DAERA Farm Business number, along with farm maps. DAERA have advised that the farm business number was originally allocated in 2004 but the farm business has not claimed payments through the Basic Payment Scheme or Agri Environment Scheme in any of the last 6 years. DAERA confirm that this business number closed in June 2014 due to the death of a member of the business. No payments have been made in the last six years and the proposed site is located on land not claimed by any farm business in the current year.
- 3.15 Within the clarification accompanying Policy HOU11, para 3.49 states: “For the purposes of the policy, a farm business is one that demonstrates that it enjoys the decision-making power, benefits and financial risks in relation to the agricultural activity on the land. One of the clearest ways of demonstrating that a farm business is currently active is by providing an active DAERA Business ID Number and evidence of receipt of entitlements in support of an application”. Having regard to the comments of DAERA, the Business ID Number that has been supplied does not demonstrate that there is currently an active farm business which has been established for a minimum of 6 years.
- 3.16 The comments of DAERA are one way of demonstrating that there is an active and established farm business. Where this information does not demonstrate that this is the case, applicants can submit other information seeking to demonstrate they meet the policy test. Within paragraph 3.49 of the clarification accompanying Policy HOU11, it states that “where applicants do not have a Business ID Number or evidence of receipt of entitlements, then the applicant must submit full accounts/details of any agreement which are clearly linked to the farm business. In all cases this must cover a minimum 6 year period”. However, planning policy is published in the text box under each of the headings, with clarification on the policy published underneath the policy. The clarification accompanies the policy but it cannot set a higher test than the policy or introduce new requirements that are not included within the policy. Whilst the applicant has not provided ‘full accounts’ or any

information which could be considered as being 'accounts' this does not result in the application being contrary to policy.

- 3.17 The applicant/agent has submitted supporting information in the form of receipts for hedge cutting. This information is all material. The policy test requires there to be a farm business which is currently active and has been established for a minimum of 6 years.
- 3.18 For the purposes of this policy 'agricultural activity' is as defined by Article 4 of the European Council Regulations (EC) No 1307/2013 as set out below: (c)"agricultural activity" means:
- (i) production, rearing or growing of agricultural products, including harvesting, milking, breeding animals, and keeping animals for farming purposes;
 - (ii) maintaining an agricultural area in a state which makes it suitable for grazing or cultivation without preparatory action going beyond usual agricultural methods and machineries, based on criteria established by Member States on the basis of a framework established by the Commission; or
 - (iii) carrying out a minimum activity, defined by Member States, on agricultural areas naturally kept in a state suitable for grazing or cultivation. ("agricultural area" means any area taken up by arable land, permanent grassland and permanent pasture, or permanent crops).
- 3.19 The supporting information is limited in the amount of evidence which are handwritten notes that cannot be specifically linked to or associated with the operation of a farm or farm business and do not demonstrate that there is an active and established farm business for a minimum of 6 years. The application therefore fails this part of the policy test of Policy HOU11.
- 3.20 Paragraph 3.51 of the Policy Clarification states that "Where there is a break in the farm business, for example, due to a bereavement, or a change in business numbers, then evidence of the historical farm business number along with details of the current farming activity must accompany the application". The supporting information does not demonstrate that there is currently an active farm business which has been established for a minimum of 6 years.
- 3.21 An email exchange between the case officer and the agent highlighted issues with the application to the agent on 31st July 2023 and in a response from the agent to the case officer on 21st August 2023, the agent confirms the land was taken in conacre by Mr. Geoffrey Hamilton since 2014, Farm Business ID 622254. The applicant's address is Fivemiletown as the property (No. 19) was his parent's home, but his father deceased in 2014 and his mother is now in a nursing home.
- 3.22 DAERA has confirmed that the applicant did not claim payments through the Basic Payment Scheme or Agri Environment Scheme in any of the last 6 years and the business number is now closed due to the death of the one member of the business. Having regards to all of this information the documentary evidence does not demonstrate that the applicant has an active and established farm business for the required period or that there has been a break in the farm business. The evidence before the Council is limited in its scope and in detail, the invoices are handwritten and as noted above cannot be directly linked to agricultural activities on the applicants' holding. Whilst the Council has no direct contradictory evidence, the

applicants' information is insufficient to demonstrate on the balance of probability, that there is an active and established farm business over the required six year period.

- 3.23 Further comments received by the Council noted new information provided in the appellant's SOC which was not presented during the application, namely the provision of a new/additional farm business ID number. Council have stated that they have not had the opportunity to consult with DAERA regarding this new information, nor is there a P1C form signed and dated by the owners of this business ID number confirming that they give consent for the ID number to be used. Whilst it is stated in the appellant's SOC that a copy of their farm maps are attached, Council have not received said attachment. Council would advise this information should have been submitted during the processing of application. Council would ask the Commission to disregard this new information that we have not had sight of before. The appeal process is not the mechanism for consideration of this new information. Council would advise a new application should be submitted for any new information to be considered.
- 3.24 With regards to the receipts submitted in relation to hedge cutting, Council make the comment that these receipts have no VAT number or name of a business or operator to trace back to who completed the work. Whilst there is a date and a signature, it is not clear that these receipts relate to the farm business subject to this appeal, nor do the receipts demonstrate business activity for the entire 6 years.
- 3.25 The second test within Policy HOU11 is that the site for the new dwelling must be visually linked or sited to cluster with an established group of buildings on the farm holding unless the farm activities would significantly affect the amenity of the new dwelling or there are verifiable plans to expand the farm and there are no alternative sites at another farm group on the farm. In these cases, the new building must be located on a site which is as close as possible to the existing group of buildings and which visually integrates into the landscape.
- 3.26 The appeal site is beside a group of old buildings which are considered to be on the farm as they are within the blue land identified on the site location plan as being within the control of the applicant. A new dwelling would be visually linked and sited to cluster with these established group of buildings on the farm holding. The final test of the policy is that no dwellings or opportunities shall have been sold off or transferred from the farm holding within 10 years of the date of application. A search of the farm business ID has been undertaken and there have been no other approvals under this ID number. The applicant/agent have indicated on the application form that no opportunities have been sold or transferred off the farm holding.
- 3.27 The following policies are not offended by the appeal development:
- Policy HE01 - Archaeology Policy;
 - Policy HE02 - Listed Buildings and their Settings;
 - Policy NE01 – Nature Conservation;
 - Policy NE02 – Protected species and their habitats;
 - Policy NE03 – Other habitats, species or features;
 - Policy FLD01 – Development in flood plains;

- Policy FLD02 – Development affected by surface water flooding outside flood plains;
 - Policy FLD03 – Sustainable Drainage Systems;
 - Policy TR01 – Land use and Transport; and
 - Policy PU04 – Development relying on Non-mains sewerage.
- 3.28 Strategic Policy SP01 – Furthering Sustainable Development. This strategic policy permits development proposals which furthers sustainable development and promote measures to mitigate and adapt to climate change, and which have regard to the Local Development Plan and other material considerations. Unless the proposed development will cause demonstrable harm to interests of acknowledged importance. In such cases, planning permission should be refused.
- 3.29 As the application does not meet Policy DE03 or any of the additional policies listed within the Plan Strategy, then the proposal is not considered to be sustainable development and there is harm to interests of acknowledged importance, the proposal is contrary to Policy SP01. There are no other material considerations which indicate that permission should be granted contrary to the LDP.
- 3.30 Should the appeal be allowed, the following conditions are proposed on a without prejudice basis:
- The requirement for submission of plans for vehicular access, visibility splays, and forward sight lines to be submitted at reserved matters stage;
 - The area within the visibility splays and any forward sightline shall be cleared and kept clear thereafter;
 - Requirement for submission of details of the siting, design and external appearance of the buildings, the means of access thereto and the landscaping of the appeal site;
 - Details of a Sustainable Drainage Systems (SuDS) shall be submitted at Reserved Matters stage;
 - The existing mature trees and vegetation within and around the entire site boundaries of the host agricultural field shall be retained. No trees or vegetation shall be lopped, topped or removed;
 - A landscaping scheme shall be submitted with the detailed drawings at the Reserved Matters stage. Any trees or shrubs which may be damaged or die within 5 years shall be replaced by plants of similar species and size at the time of their removal. All landscaping shall take place within the first available planting season after the commencement of the development. The plans submitted shall include details of the site preparation, planting methods, medium and additives together with the species, size and time of planting, presentation, location, spacing and numbers of all trees and shrubs to be planted and the proposed time of planting; and
 - Time Limit.

4.0 APPELLANT'S CASE

- 4.1 The proposed site is located 40m East of 19 Greentown Road, Florencecourt, Enniskillen. It is positioned behind the existing farm buildings and is well screened from the public by existing mature trees and hedges. The site is relatively flat and will not create or add to a ribbon of development. The existing group of old farm buildings would be visually linked and sited to cluster with the proposed development.

- 4.2 The application was submitted in the name is Paul Elliott and the address given for his farm ID is 14 Owenskerry Lane, Enniskillen on the P1 application form. The P1 form states that farm business was established 03/1983 and allocated business ID 633854 on 05/03/2012.
- 4.3 Policy HOU11 - Dwelling on a Farm Business. The Council will support applications for a new dwelling on a farm business which is currently active and has been established for a minimum of 6 years. The site for the new dwelling must be visually linked or sited to cluster with an established group of buildings on the farm holding unless the farm activities would significantly affect the amenity of the new dwelling or there are verifiable plans to expand the farm and there are no alternative sites at another farm group on the farm. In these cases, the new building must be located on a site which is as close as possible to the existing group of buildings and which visually integrates into the landscape. A new dwelling for the farm business will only be granted once every 10 years. No dwellings or development opportunities shall have been sold off or transferred from the farm holding within 10 years of the date of the application. Firstly, the proposed site must be on a farm business which is active and established for a minimum of 6 years.
- 4.4 The policy states that the “farm business” has to be active but not necessarily that the owner has to be an active farmer. DAERA have advised that the farm business ID number (633854) was originally allocated in 2004 and that it was now closed due to the death of the member in 2014. No farm payments have been claimed or paid in the last six years. The proposed site is located on land currently claimed for in 2023 under farm business number 622254 (Jeff and Nigel Hamilton) who currently take the land on conacre. The site is indicated on a copy of their farm map showing the proposed site within their control.
- 4.5 The policy states where there is no farm business ID number or evidence of receipt of entitlements, then the applicant must submit full accounts & details of any agreement which are clearly linked to the farm business. The applicant has submitted receipts for hedge cutting. DAERA will be able to confirm that single farm payments have been claimed on this farm business continuously for at least the last 6 years.
- 4.6 Under Policy Clarification also it states: For the purposes of this policy ‘agricultural activity’ is as defined by Article 4 of the European Council Regulations (EC) No 1307/2013. A “farm holding” is the economic unit under a single management engaged in agricultural activities. It includes land that has been owned or taken as conacre. The application site should be located on the farm holding that has formed part of the farm business for a minimum of 6 years from the date of the application.
- 4.7 I would refer you to a recent approved application (LA10/2023/1369/O), where the applicant did not have a farm business ID number and let the land on conacre. In this case DAERA were not consulted as there was no farm business ID number but the owner provided receipts which showed he had been maintaining the land for the last six years and therefore planning permission was granted. I would also like to refer to planning application (LA10/2023/1330/O) were again due to the death of the original farm business ID member, receipts were produced as the land was let on conacre. The members of the Planning Committee took the view that under a conacre

agreement, the owner was maintaining the land even though it was through a third party.

- 4.8 Policy clarification also states: “Visually linked” means that the proposed dwelling will read with existing buildings with little appreciation of any physical separation that may exist between them and when viewed from surrounding vantage points. This depends on careful siting and the degree of existing landscaping at the building group. The case officer states in their case notes that the site is located beside a group of old buildings which are considered to be on the farm and that any new dwelling would be visually linked and sited to cluster with these established buildings on the farm holding.
- 4.9 Under the new Local Development Plan 2030, the following Policies are now relevant: Policy DE01 – General Amenity Requirements. The case officer states that a new dwelling could be developed with a suitably sized garden area without harming the amenities of the adjacent houses as there would be enough separation distances to ensure there is no overlooking. Also, final details can be agreed at Reserved Matters stage.
- 4.10 Policy DE02 – Design Quality. These can be agreed at Reserved Matters stage so that the building can respect the built form of the immediate area and integrate into the landscape.
- 4.11 Policy DE03 – Sustaining Rural Communities. Although the site is in the countryside it is outside a Special Countryside Area. The Council will support different types of development in the countryside which sustain rural communities and protect and improve the environment. This policy also states that all development proposals for buildings in the countryside must cluster, consolidate and group with existing established buildings. The proposed site will cluster and visually link with these existing established buildings.
- 4.12 Policy DE04 – Integration & Design of Development in the countryside. As stated, the proposed site will cluster and visually link with the adjacent buildings. Also, the site has mature hedges along the field boundaries which help any new dwelling integrate into the landscape. The access is via an existing laneway, which although cuts partly across a field, is sufficiently close so as to integrate.
- 4.13 Policy DE05 – Rural Character. The proposed site will not create or add to a ribbon of development. The site is mainly screened off from the main road by the existing group of buildings and hedging. It is a flat site so a new dwelling would not be unduly prominent.
- 4.14 Policy HE01 – Archaeology Policy. There are no sites of archaeological potential or other features included in the DfC Industrial Heritage Records on the site or nearby.
- 4.15 Policy HE02 – Listed Buildings and their settings. Again, no listed buildings or the site or nearby.
- 4.16 Policy NE01 – Nature Conservation. The proposed site is not located within any protected area detailed on the NIEA map viewer.

- 4.17 Policy NE02 – Protected species and their habitats. The site is grassland pasture and there is no evidence of any protected species or priority habitats on the site.
- 4.18 Policy NE03 – Other habitats, species or features. The small area of hedging to be removed at the entrance can be compensated by the planting of new hedging behind the visibility splays. The proposal will not be likely to have a significant impact on the features or conservation objectives of any European site.
- 4.19 Policy FLD01 – Development in flood plains. The site is outside any fluvial flood plain indicated on Flood Maps.
- 4.20 Policy FLD02 – Development affected by surface water flooding outside flood plains. The site is outside any pluvial flood plain indicated on Flood Maps.
- 4.21 Policy FLD03 – Sustainable Drainage Systems. The site is grassland and has good drainage which could cope with any surface water run off. A Sustainable Drainage System can be submitted at Reserved Matters stage.
- 4.22 Policy TR01 – Land use and Transport. The access will use an altered existing agricultural laneway and the required visibility splays (2.4m x 70m) can be achieved in both directions as this land is owned by the Applicant.
- 4.23 Policy PU04 – Development relying on Non-mains sewerage. The site is large enough to incorporate a wastewater treatment plant and effluent pipes. A Consent to Discharge will be applied for to NIEA in respect of this arrangement.
- 4.24 We think we have proven that although the farm owner is not an active farmer, the farm business is active and the proposed development complies with all the policies. Therefore a dwelling and garage can be accommodated and integrated on this site satisfactorily.

5.0 CONSIDERATION

Preliminary Matter

- 5.1 The Council expressed concern that the new information was provided in the appellants SOC which was not presented during the application, namely the provision of a new/additional farm business ID number and a farm map which they state was not attached to the SOC. It is indicated that this information was not before the Council at the time the decision was made and that the appeal process is not the mechanism for consideration of this new information.
- 5.2 From the evidence before me, the new business ID was shared with the Council via an email dated 21st August 2023 between the agent and the case officer whereby it is stated 'the land was taken in conacre by Mr Geoffrey Hamilton since 2014, Farm Business ID 622254'. This was during the application process.
- 5.3 The farm map, presumably to accompany this business ID, was appended to the SOC received by the Commission and provided to the Council, and is discussed further within this report, albeit it does not exhibit the fuller details required to verify it.

- 5.4 The business ID was before the Council during the application process. The appellant submitted the information in response to the Council's refusal reason regarding the farm business being active and established. I am satisfied that the matter was already before the Council, and it is not a new matter. Accordingly, the additional business ID and accompanying farm map are not at odds with Section 59 (1) of the Act.
- 5.5 Moreover, the appellant is entitled to address the Council's concerns in this appeal. The Council had the opportunity to comment on the new business number within the context of the application and through the exchange of appeal evidence, despite choosing not to. It has not been prejudiced.

Reasoning

- 5.6 The main issue in this appeal is whether the proposal would be acceptable in principle in the countryside as a means of furthering sustainable development.
- 5.7 Section 45(1) of the Act requires the Commission, in dealing with an appeal, to have regard 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 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.
- 5.8 On 16th March 2023, the Council adopted the Fermanagh and Omagh District Council Local Development Plan 2030 – Plan Strategy (PS). In line with the transitional arrangements as set out in the Schedule to the Local Development Plan Regulations 2015 (as amended), the LDP now becomes a combination of the Departmental Development Plan (DDP) and the PS read together. In this appeal the Fermanagh Area Plan 2007 (FAP) is the relevant DDP. In accordance with the subject legislation, any conflict between a policy contained in the DDP and those of the PS must be resolved in favour of the PS.
- 5.9 In accordance with paragraph 1.9 of the Strategic Planning Policy Statement for Northern Ireland 'Planning for Sustainable Development' (SPPS), as the Council has now adopted the PS, the previously retained regional policies, such as the Planning Policy Statements, have now ceased to have effect within this Council area.
- 5.10 In the DDP, the appeal site is in the countryside and outside of any designations. Policy S1 thereof relates to development in the countryside. This states that outside of rural designations, permission will be granted "for single dwellings subject to appropriate criteria". These criteria would have been in regional policy, specifically Planning Policy Statement 21 – Sustainable Development in the Countryside (PPS 21), which is no longer relevant for the reasons given above. Policy S1 also requires that account be taken of other nature conservation interests and historic landscape features, such as Areas of Significant Archaeological Interest (ASAs). The appeal site is not located in close proximity to any identified ASA or other relevant designation. The provisions of the FAP are not offended by the appeal development. I now move to consider the policies of the PS.
- 5.11 Strategic Policy SP01 of the PS is entitled 'Furthering Sustainable Development'. Policy SP01 will permit development proposals which further sustainable

development and promote measures to mitigate and adapt to climate change, and which have regard to the Local Development Plan and other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance. In such cases planning permission should be refused.

- 5.12 Policy DE03 of the PS entitled 'Sustaining Rural Communities' states that outside of Special Countryside Areas (SCAs), the Council will support a range of types of development in the countryside that sustain rural communities while protecting and improving the environment. The appeal site is located outside of any SCA. One of the listed types engages Policy HOU11 'Dwelling on a Farm Business'. In addition, all proposals must comply with the development and design policies, namely DE04, DE05 and DE06. These relate to integration and design of buildings in the countryside, rural character and the setting of settlements respectively.
- 5.13 The sole reason for refusal relates to Policy HOU11 Dwelling on a Farm Business. Policy HOU11 indicates that an application will be supported for a new dwelling on a farm business which is currently active and has been established for a minimum of 6 years. It is this element of the policy alone that is the point of contention between the parties.
- 5.14 A farm map identifying 11 fields including that of the appeal site in the lands surrounding the dwelling at 19 Greentown Road was submitted with the planning application. The appellant's name is Paul Elliott and the address given for his business ID is 14 Owenskerry Lane, Enniskillen. The P1 form states the farm business was established in 03/1983 and the business ID 633854 was allocated on 5/3/2012. It acknowledges that the business does not submit Single Farm Payment or other farm subsidies but refers to receipts submitted for maintaining the land.
- 5.15 The consultation response from DAERA confirms that the farm business ID was Category 1 from 11/3/2004 and closed on 10/6/2014 due to the death of the appellant's father.
- 5.16 The appellant has not submitted accounts or details of an agreement for the requisite period as suggested by the policy justification and amplification at paragraph 3.49 of the PS but, as conceded by the Council, that is not determining of itself, should other supporting information demonstrating 6 years of 'agricultural activity' as defined by Article 4 of the European Council Regulations (EC) No 1307/2013 be forthcoming.
- 5.17 The justification and amplification acknowledges where there is a break in the farm business, due to bereavement (such as this case in 2014 when the farm business closed) then evidence of a historical farm business number along with details of current farming activity must accompany the application.
- 5.18 The appellant submitted supporting information in the form of 4 similar receipts for hedge cutting: one dated 2017, another dated 2019 and two dated 2020. Whilst these receipts state 'Greentown, Florencecourt, Fermanagh' it is not obvious that they link back to the appellant and their agricultural land as they are handwritten and there is no reference to Mr Elliot's farm business on them. Furthermore, they do not cover the required 6 year period.

- 5.19 An email exchange between the case officer and agent also states that after the previous farmer died in 2014 and his wife was moved into a nursing home, the farm was transferred to their son who lives in Fivemiletown. It further states that the land is rented to Geoffrey Hamilton in conacre from 2014 under business ID 622254. This suggests that since the father who had been farming the land deceased, that the son has let out the land to another farmer (Mr Hamilton) who may have actively farmed it and not the appellant. A farm map was provided within the appellants SoC, however, it has been clipped so that there is no name and address, business ID or date the map was produced visible. Nor are the number of pages visible, and accordingly I cannot be certain that all maps showing the extent of the lands which comprises the farm business have been submitted. Whilst the map does contain the lands surrounding the appeal site, it is of limited value due to these key details not being available.
- 5.20 No conacre agreement has been presented as a means of documentary evidence to help demonstrate that a farm business is active and established. The appellant suggested DAERA will be able to confirm that single farm payments have been claimed for this farm business ID 622254 continuously for the last 6 years. This is at odds with the DAERA response as of 2023 that states the business has not claimed within the last 6 years and that the proposed site is not located on land that is claimed by any farm business in the current year (2023).
- 5.21 Whilst a conacre agreement or other information could assist in demonstrating that the appellant enjoys the decision-making power, benefits, and financial risks in relation to the agricultural activity on the land, the second business ID does not assist in demonstrating that the farm business, under which the application is made (within the P1 form), is active and established for the last 6 years. As Mr Hamilton's' business ID 622254 is now being provided, it is unclear what the extent of his farmlands and the buildings to which they relate are. Accordingly, I do not have the necessary information to allow further assessment in relation to other elements of the policy around grouping with buildings on the farm and for disposal of development opportunities. Based on the evidence provided, the presentation of a further business ID in the absence of the complete information is of limited assistance.
- 5.22 The first farm business ID related to a farm business no longer operating which ceased in 2014 and no satisfactory information was provided to explain the ten year gap since the bereavement. There was conflicting evidence provided in respect of when the land was taken in conacre. In terms of evidence of 'agricultural activity' on its own, the receipts are of limited value as they contain no information linking them to the farm business or land in question. Furthermore, the dates of the receipts do not demonstrate agricultural activity over the 6 year minimum requirement. Taking the evidence presented as a whole I am not persuaded that the proposal is located on a farm business which is currently active and established for a minimum of 6 years.
- 5.23 The appellant refers to two planning applications, references LA10/2023/1369/O and LA10/2023/1330/O. In the first case (LA10/2023/1269/O) the appellant confirms that the owner provided receipts which showed he has been maintaining the land for the last 6 years in the absence of a business ID. This is not comparable to the appellant's case as receipts have only been provided for 3 years and they are of

limited weight for the reasons given above. In the second case (LA10/2023/1330/O), it would appear that that receipts produced for an applicant maintaining the land in conjunction with a conacre agreement were sufficient for the Planning Committee to reach the view that the application was policy compliant. The details of the volume of evidence have not been provided but neither case is directly comparable to the appeal development in the evidential context. I can therefore give little weight to these decisions.

5.24 As it has not been demonstrated that the appeal proposal would be located on a farm business which is currently active and established for a minimum of 6 years the proposal does not comply with Policy HOU11 of the PS read as a whole. As the appeal offends Policy HOU11 of the PS, and none of the other categories of development apply in this appeal, the appeal proposal also offends Policy DE03 of the PS. Consequently, it would also offend Policy SP01 in that it would not be sustainable development and would harm interests of acknowledged importance. The Council’s refusal reason is therefore sustained.

6.0 RECOMMENDATION

6.1 I recommend to the Commission that the appeal be dismissed.

6.2 This recommendation relates to the following drawing: -

Drawing No.	Title	Scale	Date refused by Council
01	Location Plan	1:2500	25 th September 2023

List of Documents

- Planning Authority: -
 - A Statement of Case
Fermanagh and Omagh District Council
 - A1 Rebuttal Statement
Fermanagh and Omagh District Council
- Appellant: -
 - B Statement of Case
Robert Brown M.C.I.O.B