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<b>Appeal Reference:</b>	2024/A0021
<b>Appeal by:</b>	Mr Kieran Duffy
<b>Appeal against:</b>	The refusal of outline planning permission
<b>Proposed Development:</b>	Dwelling house with detached garage at an existing cluster of development
<b>Location:</b>	Immediately adjacent to 141 & 151 Muldonagh Road, Claudy
<b>Planning Authority:</b>	Causeway Coast and Glens Borough Council
<b>Application Reference:</b>	LA01/2021/1502/O
<b>Procedure:</b>	Written representations and accompanied site visit on 23 <sup>rd</sup> September 2024
<b>Decision by:</b>	Commissioner Gareth Kerr, dated 10 <sup>th</sup> October 2024

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## Decision

1. The appeal is dismissed.

## Reasons

2. The main issues in this appeal are whether the proposal would be acceptable in principle in the countryside and whether it would add to a ribbon of development.
3. The Planning Act (Northern Ireland) 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. Where regard is to be had to the LDP, the determination must be made in accordance with the plan unless material considerations indicate otherwise. The Northern Area Plan 2016 (NAP) operates as the local development plan (LDP) for this area as the Council has not yet adopted a Plan Strategy. In the NAP, the site is located in the open countryside and is not subject to any specific policy or designations. The plan states that a development limit has been designated for the village of Foreglen, approximately 500m east of the site, to restrict further elongation of the village. As the NAP does not contain any provisions for residential development in the countryside, I therefore turn to other material considerations.
4. The Strategic Planning Policy Statement for Northern Ireland (SPPS) sets out the transitional arrangements that will operate until a local authority has adopted a Plan Strategy for their council area. It also retains certain existing Planning Policy Statements including Planning Policy Statement 21 – Sustainable Development in the Countryside (PPS 21). Where the SPPS is silent or less prescriptive on a particular planning policy matter than retained policies, this should not be judged to lessen the weight to be afforded to the retained policy. Paragraph 6.73 of the SPPS makes provision for a new dwelling at an existing cluster of development which lies

outside a farm provided it appears as a visual entity in the landscape; and is associated with a focal point; and the development can be absorbed into the existing cluster through rounding off and consolidation and will not significantly alter its existing character, or visually intrude into the open countryside.

5. Policy CTY1 of PPS 21 states that there are a range of types of development which in principle are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development. The first of these is a dwelling sited within an existing cluster of buildings in accordance with Policy CTY2a. 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.
6. Policy CTY2a states that planning permission will be granted for a dwelling at an existing cluster of development provided all the following criteria are met:
  - the cluster of development lies outside of a farm and consists of four or more buildings (excluding ancillary buildings such as garages, outbuildings and open sided structures) of which at least three are dwellings;
  - the cluster appears as a visual entity in the local landscape;
  - the cluster is associated with a focal point such as a social / community building / facility, or is located at a cross-roads;
  - the identified site provides a suitable degree of enclosure and is bounded on at least two sides with other development in the cluster;
  - development of the site can be absorbed into the existing cluster through rounding off and consolidation and will not significantly alter its existing character, or visually intrude into the open countryside; and
  - development would not adversely impact on residential amenity.
7. As the SPPS is less prescriptive than the retained policies regarding the provision of a dwelling within an existing cluster of buildings, the proposal must be assessed against Policy CTY2a of PPS 21 in accordance with the transitional arrangements set out in the SPPS.
8. The appeal site is a square plot of somewhat overgrown land with frontage onto the Muldonagh Road to the north east. The surrounding area is quite heavily developed, principally by a small housing development of 22 dwellings called Muldonagh Cottages to the west. There are also a number of one-off houses and rural businesses. A dwelling at No. 141 Muldonagh Road lies between Muldonagh Cottages and the appeal site and bounds its north western side. To the south west of the appeal site is No. 151 Muldonagh Road, a bungalow sited in the western corner of a large plot. It is accessed via an abandoned and stopped up section of the former Foreglen Road which now bypasses the area approximately 80 metres to the south. To the west of Muldonagh Cottages are three further dwellings on roadside plots and a timber frame manufacturing company to their rear. On the opposite side of Muldonagh Road are some larger properties including a dwelling at No. 196 and Muldonagh Country House guest house at No. 198A. To its rear is a kitchen manufacturing business. A new dwelling is under construction to the west of No. 196 and a further infill dwelling is approved to its west. There are four more single dwellings to the east of the point where the Muldonagh Road bisects the former Foreglen Road.

9. Policy CTY2a does not explicitly define what constitutes a cluster of development for the purposes of the policy, but the first three criteria give an indication of its intended meaning. It is not disputed that there is a significant group of buildings that appears as a visual entity in the local landscape, but the extent of the visual entity is disputed. The Council's first reason for refusal stated that the site is not within the visual entity and cannot be absorbed into the cluster and the cluster is not associated with a focal point or located at a cross-roads. However, at the site visit, the Council representative accepted that the appeal site does lie within a visual entity of development comprising Muldonagh Cottages, the dwellings to the east and west of the Cottages and Nos. 196, 198A and the new dwelling to the northern side of Muldonagh Road.
10. The parties disagreed as to whether the four dwellings on the eastern section of the old Foreglen Road comprised part of the same visual entity. The Council considered these dwellings to be a separate group of buildings set back on a different minor road. These dwellings are quite well screened by existing trees when viewed from the Muldonagh Road and there is a significant visual gap between the buildings at the guest house and No. 258a Foreglen Road. Despite this gap in built development, their curtilages are adjacent to one another and given there is some visual linkage between them and the development further west on Muldonagh Road, I consider them to be part of the same visual entity. Even if these four dwellings were not considered to be part of the visual entity, there is a group of more than four buildings to the west of the junction which appears as a visual entity in the local landscape and the Council now accepts that development on the appeal site could be absorbed into this group.
11. The key remaining issue in order to establish whether there is a 'cluster' as envisaged by the policy is whether it is associated with a focal point such as a social / community building / facility, or is located at a cross-roads. The appellant argued that the proposal met both of these propositions. Satisfying one of the two would be sufficient to comply with this criterion.
12. Firstly, the appellant argued that the overall size of the cluster comprising some 34 dwellings, outbuildings, street lighting, mains sewers, public footpaths and several commercial enterprises, is in itself a very strong focal point in this rural locality. He further stated that there were four commercial businesses within the cluster which provided local employment: a timber frame joinery workshop, a kitchen manufacturing business, a holiday let within the curtilage of No. 196 Muldonagh Road and the Muldonagh Country House guest house which provides tourist accommodation. They pointed to a site at Ballyrashane Road, Coleraine, approved by the Council under the same policy (Ref: LA01/2016/0526/F, renewed under LA01/2021/1042/F) where it accepted that businesses offering local employment opportunities could be a focal point within a cluster. This application was itself a renewal of an application (C/2010/0683/F) determined by the Department of the Environment (DoE).
13. The Council did not accept that a rural housing estate could in itself be considered a focal point for the purposes of the policy. With regard to the commercial premises, the Council referred to appeal decision 2017/A0035 where the appellant argued that a kennels business was a focal point that provided local employment. However, the Commissioner found that *"this private business serves a specific market as it is used*

*exclusively by dog and/or cat owners. While the third criterion of the policy is not specific or exhaustive in its definition of a focal point, the example given in the policy infers, in my judgment, that a focal point is an identifiable entity used by the community for gatherings or activities with social interactions. To this end, I would concur with the Council that a focal point could be a church, community hall or school building i.e. an entity that serves as a focus for much wider community involvement and social interaction than a specialised business carried out in a number of agricultural type buildings would.”* Taking its lead from this decision, the Council did not consider any of the four businesses around Muldonagh Cottages to constitute a focal point for the purposes of Policy CTY2a. With regard to the Council decision referred to by the appellant where a business was accepted as a focal point, the Council representative drew back from such an interpretation of the term and stated that the subsequent Commission decision 2017/A0035 clarified that a business should not be accepted as a focal point.

14. Although Policy CTY2a uses the words, “such as a social / community building / facility” (my emphasis), a term which is not exhaustive, in describing a focal point, I agree with the Council that a focal point should be a focus for community interaction and that a specialist business is not such a focal point, regardless of the number of people it may employ. The businesses referred to by the appellant would potentially attract tourists or customers from a wide area, but I have been given no evidence that they are a focus for the community itself. Neither would a large number of buildings grouped in a rural area necessarily indicate that a focal point is present. Whilst there are a large number of individual buildings associated with Muldonagh Cottages and it has infrastructure that would be found in a defined settlement, this, of itself, would not indicate that there is a focal point such as a social / community building / facility.
15. The appellant provided a letter from Foreglen Community Association which is based at No. 267 Foreglen Road stating that it provides services to both the residents of Foreglen village and Muldonagh Cottages. Whilst it would constitute a focal point for the purposes of the policy, its premises is located to the south of the Foreglen Road between the village and the Muldonagh Cottages group of buildings. The appellant’s supporting statement indicates that it is a 5-minute walk from Muldonagh Cottages and I do not consider it to be associated with the visual entity where the appeal site is located.
16. I consider the DoE / Council approval where a business offering local employment was accepted as a focal point to be a poor decision. As the original approval of that site pre-dated the Council’s time as planning authority, greater clarity has since been provided by the Commission and no additional examples have been cited to demonstrate a wide-ranging precedent, this one site would not outweigh the absence of a social or community building or facility in this appeal. I conclude that Muldonagh Cottages is not associated with a focal point as envisaged in the policy.
17. The parties disputed whether the group of buildings was located at a cross-roads. There is a junction approximately 60m south west of the appeal site where the Muldonagh Road crosses the old route of the Foreglen Road which is now further south. The Muldonagh Road has been extended south to meet the new road leaving what the appellant describes as a cross-roads. The eastern leg of the old road provides access to four dwellings and connects to the main Foreglen Road to the

south east. I was advised that it is still a public road. However, the western leg of the old road now serves as a private access to No. 151 Muldonagh Road and is stopped up at the southern corner of that property. The Council said that this part of the road was abandoned in 1982, so it is no longer a public road. Signage indicates that it is a private road leading to No. 151 and during my site visit, barriers were erected across it to prevent pets entering the Muldonagh Road. In light of this, the Council representative described the junction as a T-junction with a private access opposite. The appellant considered that it looked like a crossroads on the ground and should be treated as one.

18. The appellant referred to appeal decision 2017/A0113 which related to a site near the point where an unadopted road crossed Gault's Road, Cushendall. The Commissioner stated, "*I agree that Policy CTY2a does not indicate that the term crossroads applies only in respect of adopted public roads*". However, he went on to find that the cluster of development in question was located at least 70m from the "crossroads" rather than at it, so the proposal did not comply with this policy criterion. As the appeal was dismissed, any comments regarding unadopted roads were obiter. No approval was granted on the basis of an unadopted road and therefore the cited decision does not assist the appellant's case. I also note that as in the Gault's Road appeal, none of the buildings which form the cluster are located at the junction, but are scattered at some distance to its north, east and west.
19. Section 250 of the Planning Act (Northern Ireland) 2011 adopts the definition of a road set out in the Roads (Northern Ireland) Order 1993. Article 2 thereof states "road" means a public road, that is to say a road which is maintainable by the Department. Article 68 of the Roads Order states that the Department may by order provide for — (a) the abandonment of any road; or (b) the stopping-up of any road. On the coming into operation of an order for the abandonment of a road — (a) the road shall cease to be maintainable by the Department; and (b) any public right of way over the road shall be extinguished.
20. It is not disputed that the western leg of the former Foreglen Road was abandoned over 40 years ago. Accordingly, it is no longer a public road, maintainable by the Department. As both a matter of law (in light of the definitions set out above) and as a matter of fact (since it now operates as a private driveway to a single dwelling), it is not a road, so it cannot form part of a cross-roads for the purpose of the policy. I concur with the Council that the junction relied upon by the appellant as a "cross-roads" is in fact a T-junction with a private access opposite. As the group of buildings which appears as a visual entity in the local landscape is not associated with a focal point or located at a cross-roads, the grouping does not satisfy the third criterion and does not constitute a cluster within the meaning of Policy CTY2a.
21. Policy CTY8 of PPS 21 states that planning permission will be refused for a building which creates or adds to a ribbon of development. Policy CTY14 of PPS 21 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. A new building will be unacceptable where any of five criteria are offended including (d) it creates or adds to a ribbon of development (cross-referenced with Policy CTY8). Paragraph 5.33 of PPS 21 states that a 'ribbon' does not necessarily have to be served by individual accesses nor have a continuous or uniform building line. Buildings sited back, staggered or at angles and with gaps between them can

still represent ribbon development, if they have a common frontage, or they are visually linked.

22. Eight of the dwellings in the Muldonagh Cottages development have frontage onto the Muldonagh Road. In addition, road frontage dwellings at Nos. 131, 133, 135 and 141 Muldonagh Road share a common frontage with the development at Muldonagh Cottages to comprise an existing ribbon of development that stretches for around 300 metres along the southern side of Muldonagh Road. The erection of a dwelling on the appeal site adjacent to No. 141 would further extend this existing ribbon of development which would further erode the rural character of the area.
23. The appellant argued that the proposal would not present as ribbon development because there is development behind the appeal site at No. 151 and behind the road frontage dwellings at Muldonagh Cottages. This argument appears to draw on the separate definition of a substantial and built up frontage within the headnote of Policy CTY8 for the purpose of determining an infill opportunity, which is not relevant to the current appeal. There is an existing ribbon of development in the terms set out in paragraph 5.33 of the policy (quoted above) and the proposal would add to it. It is therefore contrary to Policy CTY8 and Policy CTY14 (d) and the Council has sustained its second reason for refusal.
24. The appellant argued that he is a native resident of the Muldonagh Townland and is now semi-retired. He wishes to erect a dwelling on the appeal site for his retirement in order to be close to his family support network who also reside in the immediate area. According to the planning application form, the appellant lives in the Foreglen area approximately 2km from the appeal site. No information was provided regarding where his support network is located, the type of support that he would require, or why this could not be provided at his current residence. There is no evidence of a compelling and site-specific need for a dwelling on the appeal site and his desire to erect a dwelling there would not override the policy objections to the proposal set out above. I find the proposal to be unacceptable in principle under Policy CTY1. Accordingly, the Council has sustained its first reason for refusal.
25. As both of the Council's reasons for refusal have been sustained and are determining, the appeal must fail.

This decision is based on drawings 01 – Site Location Map at scale 1:2500, 02 – Visibility Survey at scale 1:500, and 03 – Concept Site Plan at scale 1:500, which were received by the Council on 9<sup>th</sup> December 2021.

**COMMISSIONER GARETH KERR**

## **List of Appearances**

Planning Authority:- Mr Martin McErlain  
Ms Rachel McWilliams

Appellant:- Mr Kieran Duffy  
Mr Lee Kennedy

## **List of Documents**

Planning Authority:- A Statement of Case  
Causeway Coast and Glens Borough Council

B Rebuttal Statement  
Causeway Coast and Glens Borough Council

Appellant:- C Statement of Case  
Lee Kennedy Planning

D Rebuttal Statement  
Lee Kennedy Planning