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<b>Appeal Reference:</b>	2022/A0119
<b>Appeals by:</b>	Mr P J Butler
<b>Appeals against:</b>	The refusal of outline planning permission
<b>Proposed Development:</b>	Site for Dwelling and Garage
<b>Location:</b>	Lands 60m SE of 37 Ballylurgan Road, Randalstown
<b>Planning Authority:</b>	Antrim and Newtownabbey Borough Council
<b>Application Reference:</b>	LA03/2022/0616/O
<b>Procedure:</b>	Written representations and Commissioner's site visit on 4 <sup>th</sup> June 2024
<b>Decisions by:</b>	Commissioner Kevin Gillespie, dated 5 <sup>th</sup> August 2024

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## Decision

1. The appeal is dismissed.

## Reasons

2. The main issues in this appeal are whether the appeal development would be acceptable in principle in the countryside.
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 (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 LDP, the determination must be made in accordance with the Plan unless material considerations indicate otherwise.
4. The Antrim Area Plan 1984 - 2001 (AAP) operates as the LDP for the area in which the appeal site is located. In it, the appeal site is in the countryside, outside of any settlement limit. As the rural policies in the plan are now outdated, having been overtaken by a succession of regional policies for rural development, no determining weight can be attached to them. There are no other provisions in the operating LDP that are material to the determination of the appeal.
5. The Strategic Planning Policy Statement for Northern Ireland (SPPS) sets out transitional arrangements that will operate until a Plan Strategy (PS) for the Council area is adopted. In this Council area, no PS has been adopted. Accordingly, during the transitional period, the SPPS retains certain Planning Policy Statements including Planning Policy Statement 21: Sustainable Development in the Countryside (PPS 21). As there is no conflict between the provisions of the SPPS and the retained policies on the issues raised in this

appeal, in line with the transitional arrangements of the SPPS, the appeal should be determined in accordance with retained policy within PPS 21.

6. Policy CTY 1 of PPS 21 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. One of these allows for a dwelling on a farm in accordance with Policy CTY 10 of PPS 21.
7. The appeal site, which is gently sloping from north-east to south-west, comprises a broadly rectangular roadside portion of land located on the eastern side of Ballylurgan Road. The site is bounded by mature hedges and trees along the north-eastern, south-eastern and south-western (roadside) boundaries and by a leylandi hedge along its north-western boundary. The appeal site is accessed via an agricultural gate directly from the road.
8. Further to the north-west of the appeal site lies No. 37 Ballylurgan Road, which comprises a detached single storey dwelling and detached garage whilst a laneway which serves No. 35a Ballylurgan Road, lies immediately to the south-east of the appeal site. No. 35a itself, which comprises a storey and a half detached dwelling and detached garage, is positioned to the north-east of the appeal site. A large agricultural field wraps around No. 35a and the appeal site in an inverted 'L' shape and extends in a north-east direction from its boundary with No. 39 Ballylurgan Road, (the registered address of the farm business), and then in a south-east direction towards the public road.
9. Policy CTY 10 of PPS 21 indicates that planning permission will be granted for a dwelling house on a farm where three criteria are met. The Council's objection relates to criteria (a) and (c) in so far as it considers that the appeal site is not part of an active and established farm business and that the proposal would not be visually linked or sited to cluster with an established group of buildings on the farm.
10. The appellant's farm business comprises some 1.547 hectares of land as shown on his 2017 farm maps. It is split between two fields, with the smallest (Field No. 1/081/094/5/A measuring some 0.63 hectares) comprising the appeal site and another field (Field No. 1/081/094/5/B measuring some 0.914 hectares) located on the opposite side of the Ballylurgan Road. The latter field is currently set out as an area comprising a landscaped garden and ponds with the remainder in rough grassland.
11. Paragraph 5.38 of the justification and amplification text to Policy CTY 10 states that '*new houses on farms will not be acceptable unless the existing farming business is both established and active*'. The applicant will therefore be required to provide the farm's DARD business ID number along with other evidence to prove active farming over the required period.
12. The Department of Agriculture, Environment & Rural Affairs (DAERA) consultation response dated 9th August 2022 confirmed that the appellant's farm business (ID number 623581) was first established in November 2017. There is no dispute between the parties that the farm business is established. However, DAERA also advised that it was a Category 2 Farm Business and that it has not claimed any

payments through the Basic Payments Scheme. In the 'comments section', they state that, *"Proposed site located on land associated with another farm business"*.

13. From the evidence, I note that the appeal site is let in conacre and a copy of the conacre agreement dated 3 March 2017 was provided. It details an agreement for the land to be let to a third-party tenant to take the land in conacre from March 2017 – March 2029. The Council stated that in respect of conacre arrangements, it is generally the case that it is the conacre tenant who carries out the main agricultural activity on that land and enjoys the decision-making power, benefits and financial risks in relation to this agricultural activity. However, in this case, I note that Section 7 of the agreement titled 'Other Agreements Between the Licensor and Licensee' includes criterion (g) which states that the licensor shall be responsible for all maintenance of the land, hedges and gates.
14. The Council expressed concerns regarding the authenticity of criterion (g) in respect to the different typeface used, spelling mistakes therein and the different paragraph indentation when compared to that of the other criteria (a) – (f) as detailed at Section 7 of the agreement. The appellant has provided no explanation for this anomaly. Given the discrepancies identified by the Council, and in the absence of any reasonable explanation for them, I also share the Council's concerns as to the authenticity of this document.
15. A series of invoices (handwritten and typed) to support the appellant's position of active farming were provided by the following:
  - Invoices from a plant hire company for work to a sheugh and drawing and levelling top soil to Ballylurgan Road;
  - Invoices from a company who undertook works to stone boundary walls;
  - Invoices from the appellant to the conacre farmer for land rental at Ballylurgan Road dating from October 2013 through to October 2021; and
  - Invoices from a local farmer for silage cutting and baling dating from August 2017 through to June 2023.
16. In respect of the invoices from the plant hire company and the stonework company, these relate to other lands within the appellant's ownership and not the appeal site. In any event, because all the works were undertaken prior to the establishment of the appellant's farm business in October 2017, they do not assist the appellant's case. In addition, none of the invoices from the appellant to the conacre farmer represent evidence of active farming by the appellant. As such, they also do not assist the appellant's case.
17. In its Statement of Case, the Council states that the four invoices submitted from the local farmer at application stage did not include a business name or VAT details. The Council undertook an internet search of the farmer's name and obtained no information to corroborate the invoice evidence. At appeal stage, the appellant's Statement of Case included seven additional invoices from the local farmer dated 2017 – 2023. In its rebuttal statement, the Council detailed some additional concerns with this evidence as set out below.
  - Firstly, the Council raised an issue regarding the numbering of two invoices (the invoice dated 12/09/20 is numbered 10921 whereas invoice dated 23/08/21 is

number 10721, some 11 months later). The Council states that as time passes, invoice numbers should increase correspondingly not decrease.

- Secondly, the Council queried what the appellant used the silage for given that no animals were observed on the farm holding nor was there any evidence of any livestock provided in the evidence or invoices for the sale of the silage.
18. In the appellant's evidence, there is a signed copy of a letter from the local farmer dated 20 June 2023 addressed to the Commission. In this letter, he states that he undertakes work for other local farmers one of which is the appellant. The letter goes on to state that he first started work for the appellant some 15 years ago and that annually, he makes round bale silage in the field that adjoins the pond and cuts the hedges at the field opposite the pond. Attached to this letter, he provided a letter from DAERA which confirmed not only his address but also his Farm Business ID number and details of his farm holding which comprises 34.27 hectares. The Council had the opportunity to rebut this evidence but did not. On this basis, I am content that his credentials are bona-fide.
  19. At my site visit, I noted some 12No. bales sited in Field No. 1/081/094/5/B which is consistent with the evidence provided. I have no reason to dispute the evidence from the local farmer given that he has provided annual invoices for the period covering 2017 – 2023 inclusive. For this reason, I am satisfied that the appellant's farm business has been active and established for at least 6 years. Notwithstanding this, given that the appeal site is let in conacre, it is associated with another farm business. This aligns with the consultation response from DAERA. The test posed by criterion (a) of Policy CTY 10 is not whether the appellant is an active farmer but whether the farm business is active and has been established for at least 6 years. The policy refers to the farm business (singular). As the appeal site is associated with another farm business, and no detail has been provided of the second farm business, I must conclude that the proposal fails to comply with criterion (a) of Policy CTY 10.
  20. Criteria (c) of Policy CTY 10 requires that the new building is visually linked or sited to cluster with an established group of buildings on the farm. The appellant contended that the appeal site is well screened and the proposal would have visual linkage with the existing buildings when viewed from the roadside. However, the established group of farm buildings is located at the appellant's home address at No. 39 Ballylurgan and comprise of the farmhouse, a timber shed and a larger agricultural building. Given the topography of the land, which rises from the road and the separation between the appeal site and the established group of buildings on the farm and the fact that there is a third-party property situated between the proposed site and the farm buildings, I consider that a dwelling and garage on the appeal site would neither be visually linked nor sited to cluster with the farm buildings.
  21. Criterion (c) goes on to state that exceptionally, consideration may be given to an alternative site elsewhere on the farm, provided there are no other sites available at another group of buildings on the farm or out farm and where there are either demonstrable health and safety reasons or verifiable plans to expand at the farm business at the existing building group(s).

22. The appellant identified other land under his control located to the north-east of the registered farm business address adjacent to the railway line but stated that *“it was unsuitable for a dwelling as it would not enjoy the ‘quite’ surroundings expected of garden space”*. In the absence of a noise report or a report from the Health and Safety Executive to rule out this site for a dwelling, I cannot be persuaded that it could not be an alternative site to satisfy the exceptional clause of the policy. For all these reasons, the appeal proposal does not comply with criterion (c) of Policy CTY 10 of PPS 21.
  
23. To comply with Policy CTY 10 of PPS 21, a proposal must meet each of the three stated criteria. In this case, as the appeal proposal does not meet criteria (a) and (c) of the policy, it therefore does not comply with Policy CTY 10 when read as a whole. For this reason, the Council’s second reason for refusal is therefore sustained.
  
24. Policy CTY 1 goes on to state that 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 nearby settlement. No persuasive evidence was presented in this regard. The proposal is therefore also contrary to Policy CTY 1 so the first reason for refusal is sustained.
  
25. As the Council has sustained all the reasons for refusal as stated, the appeal must fail.

This decision is based on the following drawing(s):

<b>Drawing No.</b>	<b>Title</b>	<b>Scale</b>	<b>Received by the Council</b>
01	Location Map	1:2500 @ A4	30 <sup>th</sup> June 2022

**COMMISSIONER KEVIN GILLESPIE**

**List of Documents**

**Planning Authority:-**

**“A1” Antrim and Newtownabbey Borough Council - Statement of Case**

**“A2” Antrim and Newtownabbey Borough Council – Rebuttal Statement**

**Appellant(s):-**

**“B1” CMI Ltd. (Agent) - Statement of Case**