

Appeal Decision

4th Floor
92 Ann Street
BELFAST
BT1 3HH
T: 028 9024 4710
F: 028 9031 2536
E: info@pacni.gov.uk

Appeal Reference: 2022/A0093
Appeal by: Mr P McManus
Appeal against: The refusal of full planning permission
Proposed Development: Retention of existing hard standing to facilitate agricultural activity
Location: Lands between No.7 and No.11 Manse Road, Castlereagh, Belfast, BT6 9SB
Planning Authority: Belfast City Council
Application Reference: LA04/2021/2320/F
Procedure: Written representations and Commissioner's site visit on 2 November 2023.
Decision by: Commissioner McShane, dated 5 March 2024.

Decision

1. The appeal is dismissed.

Reasons

2. The main issues in this appeal are whether the existing development:
 - is acceptable in principle; and
 - is of a scale appropriate for this location.
3. Section 45(1) of the Planning Act (NI) 2011 (the Act) requires the Commission when 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. In May 2023, the Belfast City Council adopted its Plan Strategy (PS). It provides the strategic policy framework for the plan area. As the Council has adopted the PS, the previously retained policies, set out in the suite of regional Planning Policy Statements (PPSs), have ceased to have effect within the Council area.
5. In line with the transitional arrangements, set out in the Schedule to the Planning (Local Development Plan) Regulations (Northern Ireland) 2015 (as amended), the LDP now becomes a combination of the Departmental Development Plan (DDP) and the PS read together. In this appeal, the Belfast Urban Area Plan 2001 (BUAP) is the relevant DDP. The draft Belfast Metropolitan Area Plan (dBMAP) is a potential material planning consideration. 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 latter.

6. In the DDP, the appeal site is located outside any designated settlement development limit in the open countryside within an Area of High Scenic Value (AHSV). Appendix A of the PS entitled Existing/Draft Policy Designations, states that the AHSV boundaries as indicated in dBMAP will be used on an interim basis until these are reviewed in the Local Policies Plan. In dBMAP the appeal site is in the countryside in a designated AHSV. AHSVs were identified to protect the setting of the city and other areas of landscape merit.
7. There is no conflict between the protective policies of the DDP and the PS in relation to AHSV. Policy LC1B-AHSVs of the PS states that development proposals that have a significant adverse impact on the landscape character, visual amenity and environmental quality of AHSVs will not be supported by the LDP. This and other pertinent policies of the PS are discussed below.
8. The appeal site (0.1ha) comprises an area of hardstanding. It is located on the northern side of Manse Road; close to the junction with Ballygowan Road. An opening, approximately 7m wide and 30m deep, between the driveways serving the adjacent dwellings (No.7 and No.11), provides access from Manse Road.
9. The eastern and north-western boundaries of the appeal site, which comprise vegetation, are coterminous with the curtilage boundaries of the dwellings at No.7 and No.11 respectively. The northern boundary of the appeal site comprises a 1m high post and wire fence and a field gate that provides access to a field beyond.
10. At my site visit I noted: two rows of round bales wrapped in black polythene along the northern boundary of the appeal site; cattle crush metal fencing in the north western corner; three trailers, two scrap vehicles; wooden pallets; a pile of loose aggregate; and a holding pen floored with wood chip mulch. The latter is located immediately adjacent to the curtilage boundary of No.11.
11. In terms of planning history on the appeal site, the current Appellant sought planning permission for a temporary change of use of the land, including the siting of four steel containers to facilitate storage of equipment and domestic items during construction of a new dwelling (No.15b). Planning permission was refused (LA04/2018/0535/F) and the subsequent appeal was dismissed in April 2019 on the basis that the proposed development failed to comply with Policy CTY 1 of Planning Policy Statement 21: Sustainable Development in the Countryside (2018/A0144).
12. The current Appellant subsequently lodged an appeal against an Enforcement Notice, dated 20 January 2020. The alleged breach related to a change of use of the land from an agricultural field to an unauthorised wood cutting business with associated storage of logs and chippings, two storage containers and hardstanding. The Enforcement Notice, varied to allow the period for compliance for the removal of the hard standing to 6 months, was upheld on 20 April 2021 (2019/E0062).
13. The current appeal seeks planning permission to retain the hardstanding that was required to be removed by the Enforcement Notice, to facilitate agricultural activity.

14. The Objectors, the occupiers of No.11 Manse Road, argue that the sole reason for retaining the hardstanding is to facilitate the Appellant reverting to a wood cutting business on the appeal site. However, there was no evidence of such activity nor of IBC tote cages filled with chopped wood on the appeal site when I visited. In any event, there is a 'live' Enforcement Notice on the site. The appeal before me seeks the retention of the existing hard standing to facilitate agricultural activity. Consequently, that is the basis on which I must make my assessment. The relevant policies in the PS are Policy DC 1: All countryside development - general policy principles, Policy DC 11: Agriculture and Policy LC1B-AHSVs.
15. Policy DC 1 of the PS states that development proposals should be supported by a justification of rural locational need and site-specific need (unless specifically excluded by other LDP provisions) and must demonstrate that there is no significant detrimental impact on rural amenity and environmental quality. All development must also ensure there is no loss or erosion of the rural character of the area. All proposals for development in the countryside must be sited and designed to integrate sympathetically with their surroundings and meet other planning and environmental considerations.
16. Policy DC 11 of the PS states that planning permission will be granted for development proposals on an active and established (for a minimum of 6 years) agricultural holding, where it is demonstrated that it is necessary for the efficient use of the agricultural holding.
17. The Appellant argues that the retention of the hardstanding is necessary for the efficient operation of an agricultural holding. First, to facilitate safe access, the parking, turning, loading, and unloading of farm vehicles, given the appeal site's location close to a busy junction. Second, to facilitate the handling of large bales, and to provide a cattle crush and suitable pen(s) for loading and treatment of animals.
18. The initial evidence submitted by the Appellant to demonstrate that there is an active and established agricultural holding for the required period comprises a farm number (663549) that was allocated on 21 March 2018 and a photograph of cattle in the field to the north of the appeal site. The allocation of a farm business number does not in itself demonstrate that there is an active and established farm business for the required period while a photograph records a moment in time. Significantly, the Department of Agriculture, Environment and Rural Affairs (DAERA) consultation response, dated 3 November 2021, indicates that the appeal site is located on lands associated with another farm business.
19. Further evidence was submitted in the appendices of the Appellant's rebuttal statement to substantiate his claim that there is an active and established agricultural holding and that the hard standing is necessary for its efficient use.
20. This includes a copy of a DAERA letter to the Appellant awarding a cattle herd number 393046, dated 12 October 2018. However, a herd number does not necessarily demonstrate the holding has been active and established for the required period or that the appeal site has been used for the purposes of agriculture. A printout showing no.6 cattle moving into the herd number is provided. However, this is not dated and there is no indication whether they remain within the herd, or of the number of livestock held. A copy of Page 1 of a

statement of insurance relating to cattle, dated 26 October 2019 is indicative of insurance cover for one year only; from December 2019 to December 2020. Similarly, the copy of the Appellant's Ulster Farmers' Union Membership Card shows that it is valid for one year only.

21. Copies of completed on-line applications to DAERA for Basic Payment, dated 31 May 2022 and 10 May 2023 respectively are provided. However, there is no indication as to whether these applications were successful. Furthermore, the evidence relating to the application, dated May 2022, contradicts that presented in the Appellant's statement of case, dated February 2023, which indicates that the "applicant has not been making claims for Basic Payments". Similarly, a completed on-line application to DAERA for the Environmental Farm Management Scheme, dated 24 September 2018, is provided. However, there is no indication as to whether the application was successful.
22. Copies of invoices of some of the expenditure incurred are provided. These relate to the purchase / sale of bales of silage, building supplies, drainage pipes, stone, fencing, and garden supplies as well as to works undertaken, such as mowing, baling, and fertilising. The invoices date from 2016 to 2023, with the exception of 2017 and 2020, while one is undated. Many of the invoices are handwritten, some of those that are typed have a Manse Road delivery address added in handwriting, one has a delivery address scored out and Manse Road added while one has no link to Manse Road.
23. It is claimed that the appeal site would be used for "storage of trailers and feeds and *occasionally* (my emphasis) for access for farm vehicles". It is also claimed that the hard standing would be used to turn and load cattle trailers, jeeps etc, which do not have the same traction as tractors. However, such vehicles are generally 4-wheel drive. Furthermore, the existing hard standing is significantly larger than what is required for the turning and loading of such vehicles, especially given the information submitted in relation to the number of cattle.
24. Notwithstanding the appeal site's location, close to the junction between Balllygowan Road and Manse Road, I have not been persuaded by the Appellant's argument that the hard standing would be required to facilitate safe access and egress from the appeal site and to prevent additional hazards for traffic on this road. The unacceptable conclusion to the Appellant's argument would be that all agricultural fields with cattle crush facilities, holding pens and stored silage bales close to major road junctions would require large areas of hardstanding.
25. Taking the submitted evidence in the round, I have not been persuaded that there is an established and active agricultural holding for the required period. Similarly, I have not been persuaded that there is a need for the hard standing vis a vis agricultural activity. Consequently, the existing hardstanding is inappropriate at this site specific, rural location of high scenic value. There is no support for the appeal development within the PS.
26. Arguing from the premise that there is a verifiable farm business, the Appellant claims an entitlement to exercise agricultural permitted development rights (PD) under Part 7, Class A of the Planning (General Permitted Development) Order (NI) 2015 (GPDO). However, given the planning history on the site and the current Enforcement Notice, the hard standing does not comprise permitted development.

Furthermore, development is not permitted by Class A of the GPDO, if as set out in Paragraph A.1(g) the ground area to be covered, as in this case, exceeds 500sqm, calculated as described in Paragraph A.2(b).

27. The Appellant goes on to argue that an area of hard standing, measuring 500sqm, could be reinstated on the appeal site under Part 7 Class A of the GPDO. It permits the carrying out on agricultural land comprised in an agricultural unit of (b) any engineering operations, reasonably necessary for the purposes of agriculture within that unit. In these circumstances, no reference is made to the minimum period of 6 years. The Appellant argues that the reinstatement of 500sqm of hardstanding constitutes a viable fallback position.
28. For the purposes of Part 7 Class A, agricultural unit is defined at Paragraph A.2 (d) as meaning land which is occupied as a unit for the purposes of agriculture other than fish farming but includes any dwellinghouse or other building occupied by the same person for the purpose of farming the land by the person who occupies the same unit. Field numbers are listed on the copy of application forms for Basic Payment and their location is identified by Townland. However, scheme maps to show the location of the agricultural unit are not provided. There is no indication as to whether there is an existing farmyard or buildings and if so, where they are located or whether the appeal site would comprise the establishment of a new farmyard. In these circumstances, the evidence regarding the "unit", is unacceptably limited and permits no further assessment.
29. The Council also argues that there is insufficient detail to substantiate the claim that the hardstanding is reasonably necessary for the purposes of agriculture. However, it is open to the Appellant to demonstrate that he can benefit from agricultural PD. The settled Commission position in such circumstances, is that there is a legal process introduced by statute that should be followed. Sections 169 – 174 of the 2011 Act provide the relevant legislation in respect of Lawful Development Certificates (LDCs). The statutory scheme involves the initial determination of lawful use by application to the planning authority for the issue of a certificate. If the application is refused, the right of appeal to the Commission is provided for. Consequently, determining weight is not attached to the Appellant's fallback argument.
30. The Council has sustained its two reasons for refusal based upon Policies DC 1 and DC 11 of the PS. In line with the wording of the transitional arrangements in the 2015 LDP Regulations, as there is no conflict arising when reading both the DDP and the PS together, the appeal development does not accord with the LDP for the reasons stated. Accordingly, the appeal must fail.

This decision is based on the following drawings:-

- LPA Drwg No.01: Site Location Plan (Scale 1:1250)
- LPA Drwg No.02: Existing and Proposed Block Plan (Scale 1:500)

COMMISSIONER MCSHANE

