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<b>Appeal Reference:</b>	2022/A0117
<b>Appeals by:</b>	S Kelly
<b>Appeals against:</b>	The refusal of full planning permission
<b>Proposed Development:</b>	Erection of 4No. garage workshops, lorry parking area and an agricultural shed – retrospective application
<b>Location:</b>	Rear of 7 Drummackan Road, Imeroo, Tempo
<b>Planning Authority:</b>	Fermanagh and Omagh District Council
<b>Application Reference:</b>	LA10/2020/0325/F
<b>Procedure:</b>	Written representations with site visit on 22 <sup>nd</sup> August 2024
<b>Decisions by:</b>	Commissioner Kevin Gillespie, dated 19 <sup>th</sup> September 2024

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## Decision

1. The appeal is dismissed.

## Preliminary Matter

2. On 31<sup>st</sup> May 2022, Fermanagh and Omagh District Council (Council) refused planning application LA10/2020/0325/F because it was, in their opinion, contrary to Planning Policy Statement 2: Natural Heritage (PPS 2), Planning Policy Statement 4: Economic Development in the Countryside (PPS 4) and Planning Policy Statement 21: Sustainable Development in the Countryside (PPS 21).
3. Following the adoption of the Fermanagh and Omagh Local Development Plan 2030: Plan Strategy on 16<sup>th</sup> March 2023 (PS), previously retained policies set out in the suite of regional Planning Policy Statements (PPSs), including PPS 2, PPS 4 and PPS 21, have now ceased to have effect within this Council area.
4. In its Statement of Case (SOC), the Council referred to policies in the PS relating to the appeal development namely Policy SP01 of the PS titled 'Furthering Sustainable Development', Policy DE03 titled 'Sustaining Rural Communities', Policy NE03 titled 'Other Habitats, Species or Features of Natural Heritage Importance' and Policies IB04 titled 'Industry and Business Development in the Countryside', IB05 titled 'Farm Diversification' and IB06 titled 'Agricultural and Forestry Development'.
5. Given that each of the aforementioned PS policies largely reflects the respective policy within the previously retained PPSs, and that no prejudice would arise to the appellant because he has had the opportunity to respond to the updated position in his evidence, the appeal is therefore assessed having regard to the updated policy context as provided by Policies SP01, DE03, NE03, IB04, IB05 and IB06 of the PS.

## Reasons

5. The main issues in this appeal are whether the appeal development would be acceptable in principle, detract from rural character and adversely impact known priority habitats and species.
6. 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.
7. As indicated above, in March 2023, Fermanagh and Omagh District Council adopted its PS. In line with the transitional arrangements as set out in the Schedule to the Local Development Plan Regulations (NI) 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. Again, in accordance with the subject legislation any conflict between the DDP and the PS must be resolved in favour of the PS.
8. In accordance with paragraph 1.9 of the Strategic Planning Policy Statement for Northern Ireland (SPPS), as the Council has now adopted the PS the previously retained policies such as the Planning Policy Statements have now ceased to have effect within this Council District.
9. In the DDP, the appeal site is in the countryside outside any defined settlement limit. There are no other policies in the DDP that are pertinent to the appeal. In the PS, the appeal site is located in the countryside. Consideration of the relevant policies in the PS are set out below.
10. Part 1 of the PS at Section 5.0 includes Strategic Policy SP01 titled 'Furthering Sustainable Development'. It states 'the Council 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'.
11. In the PS, the appeal site is located within the countryside. Policy DE03 titled 'Sustaining Rural Communities' states that 'outside Special Countryside Areas (SCAs), the Council will support a range of types of development in the countryside which sustain rural communities while protecting and improving the environment'. It states that all proposals for development in the countryside must also comply with a number of development and design policies which includes Policy DE04 'Integration and Design of Buildings in the Countryside'.
12. Policy DE03 of the PS goes on to state that planning permission will be granted for non-residential development in the countryside in a number of cases including industry and business uses in accordance with policies IB04, farm diversification proposals in accordance with policy IB05 and agricultural and forestry development in accordance with policy IB06. The policy concludes by stating that

all development proposals for buildings in the countryside must cluster, consolidate and group new development with existing established buildings.

13. The appeal site, which is broadly rectangular and measures some 0.55 hectares in area, is positioned to the north-east (rear) of No. 7 Drummackan Road which is within the ownership of the appellant and which comprises a detached one and a half storey dwelling, a shed/workshop and an outbuilding. The northern, north-eastern and southern boundaries of the site are bounded by a post and wire fence whilst the north-western boundary is bounded by a mature hedge.
14. The appeal site is accessed via a barrier-controlled tarmac lane directly from the Drummackan Road which also provides access to the rear yard of No. 7 Drummackan Road. It comprises a concrete yard in which contains a number of buildings which this appeal is seeking to regularise. Positioned along the north/north-east boundary is an agricultural shed (identified as shed 4 on the block plan) incorporating a milking parlour and an associated cattle enclosure shed and external meal bin. Adjoining this and positioned along the north-west/west boundary of the site is another cattle enclosure shed (shed 5) within which 2No. tractors and other farm machinery/equipment is also stored. Positioned along the south-east boundary is a 5-bay shed (shed 1, 2 & 3) measuring some 36m (L) x 20m (W) x 6.8m (H). Each of the 5No. bays is enclosed by a roller shutter door whilst the three centre bays each contain vehicle inspection pits. Positioned between the 5No. bay shed and the agricultural shed sited along north/north-east boundary is a silage clamp and positioned along the southern boundary is a blue-coloured shipping container which, from my observations, is used as a site office.
15. Policy IB04 'Industry and Business Development in the Countryside' of the PS states that the Council will support proposals for industry and business uses where it is a firm (rather than speculative) proposal and there is a requirement for the industry or business to be located in the countryside. In this case, the Council contends that the appeal development, which is retrospective and also the subject of current enforcement investigations, does not comply with any of the 5 criteria within policy IB04.
16. In his evidence, the appellant states that his business, which involves agricultural contracting and the repair and servicing of plant, machinery, tractors and large vehicles, was formed in February 2014 and first began operating from the shed/workshop sited to the rear of his dwelling at No.7 Drummackan Road. He stated that the business flourished and as a result, he constructed a new entrance, laneway and yard from which to operate the expanded business. The appellant advises that the construction of these elements was completed around January 2015 and that the use of the yard for the business commenced around the same time. Given the intervening time period since 2015, he asserts that the entrance, laneway and yard now represent established development and that the use of the land for the business operations in conjunction with the adjoining workshop/shed is also established.
17. Section 169 of the Planning Act (Northern Ireland) 2011 is titled 'Certificate of Lawfulness of existing use or development' (LDC) and states '*that if any person wishes to ascertain whether – (a) any existing use of buildings or other land; or (b) any operations which have been carried out in, on, over or under land, are lawful,*

*that person may make an application for the purpose to the appropriate council specifying the land and describing the use, operations or other matter’.*

18. In this case, no LDC has been issued on either the appeal site or the adjoining site at No. 7 Drummackan Road in respect of the operational development or the use of buildings for agricultural contracting and the repair and servicing of plant, machinery, tractors and large vehicles. In the absence of an LDC relevant to the appeal development, no weight can therefore be attached to the appellant’s argument that there is established operational development and an established business use at the appeal site.
19. As I have concluded that there is no established business use at the appeal site, for this reason the proposal does not therefore meet criterion (a) of Policy IB04 which relates to the redevelopment of an established business use or criterion (b) which relates to the expansion of an established business use. Furthermore, as the appeal development does not relate to the development of an enterprise park/centre for rural start-up projects, or to the re-use of an existing building for a rural start-up project and it is not for a major industrial proposal as defined by the Planning (Development Management) Regulations (Northern Ireland) 2015, the appeal development accordingly also fails to comply with criteria (c), (d) and (e) of the policy in so far as stated.
20. For these reasons, I have not been persuaded that there is a requirement for the business to be located in the countryside, the development therefore fails to comply with Policy IB04 of the PS when read as a whole. The Council’s first reason for refusal is therefore sustained.
21. Policy IB05 ‘Farm Diversification’ of the PS states that the Council will support the re-use or adaption of existing farm buildings for farm diversification run in conjunction with the agricultural operations of a farm where three criteria are met. The Council’s objection relates to criteria (c) in so far as it considers that it has not been demonstrated that the proposal would not have an adverse impact on the workings of the existing farm business. There is no dispute between the parties that the proposal does not involve the re-use or adaption of existing farm buildings.
22. Paragraph 4.24 of the justification and amplification (J&A) to the policy refers to ‘forms of diversification that are sustainable in the countryside, including suitable tourism or agri-tourism schemes’. Notwithstanding that paragraph 4.25 of the J&A goes on to list the processing of agricultural produce ancillary to the main farm, the manufacture of craft items, ‘pick your own’, tourist accommodation and livery for horses and ponies as providing appropriate diversification, the list is not exhaustive and it cannot therefore be used to justify or restrict uses to those that serve agriculture exclusively. The dictionary defines ‘diversify’ as to become varied or different such that when an organization diversifies into other things, for example, they increase the variety of things that they do or make. As agricultural contracting and the repair and servicing of plant, machinery, tractors and large vehicles is different in nature to farming, I consider that it represents, in itself, a diversification scheme.
23. The fundamental requirement of Policy IB05 is that the development is on an active and established farm holding. From the evidence, I note that the farm business ID number (Business ID: 613468) submitted by the appellant at

application stage is in the name of Mr Michael McGirr of 237 Gardiners Cross Road, Tempo and not the appellant. I also note that 2019 Farm Scheme maps were submitted to support the planning application which relate to some 102.12 hectares of land none of which however includes the appeal site. This may be because the appeal site comprises a concrete yard and not a field. Notwithstanding this, and in its consultation response dated 22<sup>nd</sup> June 2020, DAERA confirmed that this farm business ID number was allocated in July 1999 and that subsidies have been claimed or paid under this number in the past six years.

24. In his evidence, however, the appellant states that he has an agricultural business involving the keeping of cattle. Within the rebuttal evidence, he submitted 2022 Farm Scheme Maps showing Business ID number 651865 which relates to some 12.6 hectares of land none of which includes the appeal site. The appellant goes on to state that the land he farms is a mixture of lands owned by him and lands taken in conacre.
25. As the aforementioned information was only submitted by the appellant at rebuttal stage, no consultation with DAERA has been undertaken to confirm if the farm business is both active and established. Moreover, in his rebuttal the appellant also provided no information as to the date the farm business ID 651865 was allocated, nor did he provide any evidence in respect of the receipt of entitlements in relation to farm business ID 651865 to demonstrate farming activity for the required 6-year period. In the absence of a consultation with DAERA to corroborate the appellants evidence, I am unable to conclude that the appellants farm business is currently active and established in accordance with the policy.
26. I have not been provided with any evidence in respect of the workings of the farm business ID 613468. In any event, this farm business is not within the ownership of the appellant and therefore that farm business would not be run in conjunction with the appeal development and accordingly the appeal development cannot be considered as a farm diversification scheme associated with that business. Notwithstanding this, I have not been provided with information in respect of the workings of the appellant's farm business and therefore even if I was to consider that the appellant's farm business is active and established, I have insufficient information to make an informed assessment under criterion (c) as to whether the appeal development would have an adverse Impact on the workings of the existing farm business.
27. Policy IB05 goes on to state that exceptionally where it has been demonstrated through submitted information that existing buildings are not available to accommodate the development proposal or are clearly unsuitable for adaption and re-use, a new building may be permitted. In those circumstances, the policy states that any new building permitted will be required to cluster, consolidate and integrate with the existing group of farm buildings. No information has been provided in respect to the location of any existing buildings on the third party farm business ID 613468, accordingly, in respect to that business I am unable to conclude whether there are any existing buildings which could be reused.
28. The appellant has claimed that there are no existing farm buildings on the farm registered to his home address at No. 7 Drummackan Road. However, the farmhouse, outbuilding and the workshop/shed represent existing buildings on the

farm. However, as previously asserted by the appellant, given the growth in agricultural contracting and the repair and servicing of plant, machinery, tractors and large vehicles operations, these upscaled operations could not be accommodated within these existing buildings such that the new buildings, which are the subject of this appeal, were constructed. From my observations, however, because of a combination of their separation distance from the existing group of farm buildings, their disposition throughout the appeal site and their elevated/skyline position in the local landscape, the new buildings neither cluster, consolidate or integrate with the existing group of farm buildings. As such, I find that the exceptional test of Policy IB05 is not met.

29. For the reasons given, I conclude that the proposal does not comply with Policy IB05 of the PS read as a whole. Consequently, it also fails to meet Policy SP01 and Policy DE03 of the PS. Accordingly, the Council's second and third reasons for refusal are sustained.
30. Policy IB06 'Agricultural and Forestry Development' of the PS states that the Council will support proposals for agricultural and forestry development where five criteria are met. The Council's objection relates to criterion (b) in so far as it considers that it has not been demonstrated that the agricultural shed is necessary for the efficient use of the agricultural holding, criterion (c) in that it will result in detrimental impact on the amenity of residential dwellings outside the holding or enterprise arising from odours and criterion (d) in that the proposal is not sited beside existing farm or forestry buildings.
31. In his evidence, the appellant states that in the absence of any existing agricultural buildings, an agricultural shed for the housing of animals is necessary for the welfare and proper management of the animals. Notwithstanding my previous conclusion that the farmhouse, outbuilding and the workshop/shed at No. 7 Drummackan Road represent the existing agricultural buildings on the farm, the appellant has not provided any compelling evidence to clarify the animal welfare and management requirements. Consequently, given the limited information before me, I cannot be satisfied that the appeal building is therefore necessary for the efficient use of the agricultural holding. For this reason, criterion (b) of the policy is not met.
32. In respect of criterion (c), there was no substantive evidence submitted from the Council to justify their position on odour and pollution. They did not indicate the source of any odour or pollution or quantify the level of harm caused to residential amenity. In this limited evidential context and on-site observations that some odour should be expected from agricultural activities, I consider that the separation distance between the appeal site and the nearest neighbouring residential property is sufficient to allow for any obnoxious odours to dissipate to a level that would not have an unacceptable impact on residential amenity. Criterion (c) of the policy is therefore not met.
33. In respect of criterion (d), the Council states that there is no information on where the existing farm group belonging to farm business ID 613468 is located. However, as detailed previously, the farm is registered to his home address, No. 7 Drummackan Road, therefore the farmhouse, outbuilding and the workshop/shed represent the existing buildings on the farm. Notwithstanding this, because of the disposition of the appeal buildings within the appeal site and the separation

distance on the ground, the proposal is not sited beside the existing farm buildings. Criterion (d) of the policy is therefore not met.

34. Notwithstanding my conclusions in respect of criteria (b), (c) and (d) above, given that I am also not able to conclude that the appellant's farm business is active and established in accordance with the policy, I conclude that the proposal does not therefore comply with Policy IB06 read as a whole. As such, it is not supported by Policy DE03 and Policy SP01 of the PS Accordingly, the Council's fourth reason for refusal is sustained.
35. Policy NE03 titled 'Other Habitats, Species or Features of Natural Heritage Importance' of the PS states that the Council will only permit development likely to result in an unacceptable adverse impact on, or damage to, habitats, species or the features listed, where the benefits of the development outweigh the value of the habitat, species or feature. It goes on to state that in such cases, appropriate mitigation and/or compensatory measures will be required'.
36. From the evidence, the Council confirmed that the appeal site is not located within any designated sites. Moreover, the Council did not provide any evidence to demonstrate that the appeal site is a priority habitat in itself or may contain any priority species or any of the features listed at criteria (c) - (i) of Policy NE03 of the PS. The Council however identified that there is peatland which is a priority habitat within 250 metres of the site and on that basis, it asserted that a precautionary approach must be adopted given that farm livestock are a source of ammonia and other gases.
37. Policy IB06 states that air pollution related to ammonia, and the associated nitrogen deposition, is known to have a damaging impact on sensitive habitats, wider biodiversity and ecosystem resilience, as well as human health. As such, applicants are recommended to contact DAERA for further information and advice prior to the submission of a planning application.
38. Although not mandatory, no information was submitted by the appellant to confirm that contact was made with DAERA in this case. However, and in any event, given the paucity of compelling evidence on the matter of ammonia from the Council, I am therefore not persuaded that the appeal development would be likely to result in an unacceptable, adverse impact on, or damage to, habitats, species or features such that it would be contrary Policy NE03 of the PS. For this reason, the Council's fifth reason for refusal is not sustained.
39. 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.
40. As the Council has sustained the first, second, third and fourth reasons for refusal which are determining, the appeal must fail.

This decision is based on the following drawing numbers:

Drawing No.	Title	Scale	Received by the Commission
01	Location Map	1:2500	19 <sup>th</sup> March 2020

02	Block Plan	1:500	23 <sup>rd</sup> January 2020
03	Shed No 1, 2 & 3 - Plan & Elevations	1:100	19 <sup>th</sup> March 2020
04	Shed No 4 - Plan & Elevations	1:100	19 <sup>th</sup> March 2020
05	Shed No 5 – Plan, Elevation & Sections	1:100	19 <sup>th</sup> March 2020
06	Conceptual Drainage Layout	1:50/1:500/1:2500	19 <sup>th</sup> March 2020

**COMMISSIONER KEVIN GILLESPIE**



**List of Documents**

**Planning Authority:-**

**“A1” Fermanagh and Omagh District Council -  
Statement of Case**

**“A2” Fermanagh and Omagh District Council –  
Rebuttal Statement**

**Appellant:-**

**“B1” Toirleach Gourley (Agent) –  
Statement of Case**

**“B2” Toirleach Gourley (Agent) –  
Rebuttal Statement**