



Planning Appeals  
Commission

## Appeal Decision

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**Appeal Reference:** 2017/A0063  
**Appeal by:** Mr Johnny O'Kane  
**Appeal against:** The refusal of outline planning permission  
**Proposed Development:** Dwelling and garage on farm  
**Location:** 180m south of No.22a Drumaroan Road, Ballycastle  
**Planning Authority:** Causeway Coast and Glens Borough Council  
**Application Reference:** LA01/2016/1461/O  
**Procedure:** Written representations and accompanied site visit on 29<sup>th</sup> November 2017  
**Decision by:** Commissioner Diane O'Neill, dated 13<sup>th</sup> December 2017

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### Decision

1. The appeal is dismissed.

### Reasons

2. The main issues in this appeal are whether the proposed development:
  - is acceptable in principle in the countryside
  - would result in a detrimental change to the rural character of the area and AONB
  - would be able to integrate into the surrounding landscape
3. The Planning Act (NI) 2011 requires the Commission, in dealing with an appeal, to have regard to the local development plan, so far as material to the application, and to any other material considerations. The Northern Area Plan 2015 (NAP) is the local development plan for the area where the appeal site is located. NAP identifies the site as being located within the Antrim Coast and Glens Area of Outstanding Natural Beauty (AONB). NAP however identifies this designation for information purposes only. The site is located outside any settlement development limit within NAP and is within the countryside. The NAP has no material policies for dealing with dwellings in the countryside.
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 the whole of the council area. The SPPS retains certain existing planning policy statements and amongst these is Planning Policy Statement 21: Sustainable Development in the Countryside (PPS21) and Planning Policy Statement 2: Natural Heritage (PPS 2); these provide the relevant policy context for the appeal proposal. The appellant also referred to PPS 1: General Principles however this has been cancelled with the publication of the SPPS. The appellant argued that weight should be attached to Minister Attwood's Written Ministerial

Statement on 16<sup>th</sup> July 2013 'Review into the operation of PPS 21'. The Minister's Statement made it clear at the outset that it was not a fundamental review of rural planning policy. In any event a document creating policy to be followed must be composed within the guidelines set out in the applicable legislation at that time (Planning (NI) Order 1991). In light of the decision of the High Court in the Lamont case, the Planning Service Headquarters Advice Note on the implementation of Policy CTY 10 criterion (c), where there are no buildings on a farm, was withdrawn and is therefore of no relevance to this case.

5. Policy CTY 1 of PPS 21 sets out 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. A number of instances when planning permission will be granted for a single dwelling are outlined. The appellant argued that the appeal proposal represents a dwelling on a farm in accordance with Policy CTY 10 of PPS 21. Whilst the planning authority accepted that the proposal met criteria (a) of Policy CTY 10, in that the farm business is currently active and has been established for at least 6 years, they argued that dwellings and development opportunities had been granted within 10 years of the date of the application and that it would not be visually linked or sited to cluster with an established group of buildings on a farm. The planning authority also argued that the proposal would be contrary to Policies CTY 13 and 14 of PPS 21, the SPPS and Policy NH 6 of PPS 2.
6. According to the DARD maps which accompanied the planning application, the appellant has a 92ha farm holding with the majority of his land located in proximity to 93 Layde Road, Cushendall; this is therefore the 'farm' that has been considered.
7. A farmworkers dwelling, where the appellant's mother, Mrs Kathleen O'Kane, currently resides was approved adjacent to No.90 Layde Road, Cushendall (E/2000/0322/F) on 28<sup>th</sup> December 2000. Given that Policy CTY 10 only applied to dwellings or development opportunities 'sold off' from the 25<sup>th</sup> November 2008 it therefore is not a relevant development opportunity in terms of Policy CTY 10.
8. The appellant and his wife applied under farm business ID 600471 and received approval for a dwelling and garage on the farm at No.93 Layde Road (E/2010/0012/F) on 31<sup>st</sup> August 2010. Despite an agreement by the parties that development has already commenced on the site with the foundations being in place, the appellant stated he has now no need for it as he has moved into the main farm house at No.93 since his father's death. The appellant wants to revoke this permission in order to construct the appeal proposal. Whilst Section 68 (1) of the Planning Act (Northern Ireland) 2011 states that only the council can carry out a revocation when it considers it is expedient to do so and irrespective of the conclusion within appeal decision 2015/A0152, a negative condition could be imposed that the foundations be removed prior to development commencing on the appeal site.
9. Mrs Kathleen O'Kane, the appellant's mother, applied and was granted a dwelling and garage on a farm at Glenmakeeran Road, Ballyvoy, Ballycastle (E/2009/0103/O on 6<sup>th</sup> August 2009 and E/2011/0055/RM on 17<sup>th</sup> June 2011). Although this application was made by Mrs O'Kane on land that she owns and using her business ID 631995, evidence was presented by the appellant in this

appeal that the two business numbers have been merged with Mrs Kathleen O'Kane now being a member of the appellant's business ID. Although the DARD maps submitted with the appeal dated 28<sup>th</sup> January 2013 do not convey legal ownership, they show the land at Glenmakeeran Road under the appellant's business reference and his mother's applicant reference is also listed on these maps. They represent a more up to date position than the DARD maps for Mrs Kathleen O'Kane's land which are dated 24<sup>th</sup> January 2006 and formed part of the appellant's rebuttal evidence. Whilst it was stated that the site is going to be transferred to the appellant's sister, with the appellant just maintaining the land, and that Mrs Kathleen O'Kane still receives payments for her farm, in terms of Policy CTY 10 it still counts as a development opportunity granted within the last 10 years.

10. Mr J O'Kane, whose address was also given on the P1 Form as No.93 Layde Road, was granted a dwelling and garage on a farm (E/2014/0097/O and LA01/2016/0618/RM) on lands at Cairns Road, Cushendall on 29<sup>th</sup> July 2015 and 20<sup>th</sup> September 2016 respectively. Although the approvals were said to be granted under the appellant's uncle's business ID 657752 and it was stated that the appellant only maintains the land for his uncle who resides in England, Form P1C which accompanied the E/2014/0097/O application states that the appellant takes the land in conacre and the 2013 DARD maps submitted by the appellant include the land as part of the farm holding. Therefore, whilst the appellant might not get assistance on the farm from his uncle, this would be another planning permission approved on the farm within the past 10 years.
11. On 22<sup>nd</sup> April 2011 the appellant was granted a replacement dwelling on the lands at Layde Road (E/2010/0218/F). It was stated by the appellant that the dwelling was granted under Policy CTY 3, which relates to replacement dwellings, and is said to be for his sister, which was his late father's wish. Criterion (b) of Policy CTY 10 requires that no dwellings or development opportunities out-with settlement limits have been sold off from the farm holding within 10 years of the date of the application. Paragraph 5.40 of Policy CTY 10 states that planning permission will not be granted for a dwelling under this policy where a rural business has recently sold-off a development opportunity from the farm; it clarifies that 'sold -off' means any development opportunity disposed off from the farm holding to any other person including a member of the family. Whilst there is the intention to transfer the development opportunity to a family member, as there is no evidence that this has taken place this cannot be counted as a development opportunity in the current appeal.
12. Therefore whilst the appellant argued that PPS 21 does not restrict a farmer to one dwelling and that the various individuals granted planning permission are not engaged in farming the holding, there have still been a number of planning permissions granted under Policy CTY 10 within the last 10 years.
13. Criterion (c) of Policy CTY 10, which is the basis for the fifth reason for refusal, states that the new building should be visually linked or sited to cluster with an established group of buildings on the farm and where practicable, access to the dwelling should be obtained from an existing lane. Exceptionally, it is stated that 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 the farm business at the existing building group(s). The appellant is proposing the dwelling and garage on the 6.88ha out-farm at Drumaroan Road. Within the rebuttal evidence, the appellant provided an amended block plan drawing (Appendix A11) illustrating the use of the existing agricultural access opening within the application site. On site there is a very small agricultural shed the retention of which was granted planning permission on 26<sup>th</sup> October 2016 (LA01/2016/0830/F). The proposal is sited approximately 20-25m from this agricultural shed and is visually removed from it. There are also sheep pens and a container adjacent to the agricultural shed which were said to have been in situ for approximately 15 years and 10 years respectively. Irrespective of their existing or proposed finishes, the container, despite its metal columns, would still be moveable and hence lacks permanency and it and the pens are not buildings for planning purposes. It was suggested that this container could be replaced with a suitable building, however it is what is existing that must be assessed. The proposal would therefore not be visually linked or sited to cluster with an established group of buildings on the farm.

14. Whilst reference was made to plans to expand the farm no verifiable plans were provided. The appellant however considered that this alternative site was necessary due to health and safety reasons. Although he was not going to reside there, as he lives in the main farmhouse close to his elderly mother, it was stated that the proposal could be used in order to provide accommodate for someone to help him on the holding. Whilst evidence was presented of the appellant being entitled to a hardship payment due to the impact of the severe snow storm in 2013, of an incident of sheep being stolen and of dead sheep having to be collected on six occasions between 29/3/13-20/3/17 due to accidental harm and of an attack by dogs, I am not persuaded that these occasional events over a four year period would justify a dwelling on this modest 6.88ha out-farm. Whilst it is appreciated that weather can change, the appellant resides approximately 20 minutes away should the animals need to be moved. Given that other dwellings are located approximately 140m from the appeal site, the presence of the proposed dwelling here may also not prevent such unfortunate events occurring. Whilst there may be a need for quarantine facilities and for supervision of the sheep during lambing season, I am not persuaded that this evidence justifies the need for a dwelling at this modest sized part of the farm holding. Irrespective of the statistics relating to the increasing number of fatalities in the farming industry in Northern Ireland, there are alternative sites on the holding which could be used to accommodate someone to help the appellant on the farm without putting his family in danger and it is up to the family to decide who should occupy them. The appellant alluded to the proposal being used in the future by him as a retirement dwelling thus allowing his children to reside at the home farm however no substantive evidence was provided. This would also be a considerable time in the future given his family are young and there are already a number of other development opportunities on the farm. At the site visit the appellant also referred to others being granted a dwelling however no substantive evidence was provided in order to know the circumstances of the case and at any rate each proposal is assessed on its own merits.
15. In the written evidence the appellant referred to other cases which he considered to set a precedent for his proposal. Whilst each case is different and has to be assessed on its own merits, from the evidence presented by the appellant the replacement dwelling approved (E/2006/0105/O) on the Murphy farm was granted

prior to the 25<sup>th</sup> November 2008 date. The dwelling and garage subsequently approved at the out-farm (E/2009/0095/O and E/2012/0049/RM) appear to be distinguishable from the appeal proposal as the planning authority stated that there were no other development opportunities granted on the farm within the 10 year period from 25<sup>th</sup> November 2008. The planning authority were also satisfied that visibility splays could not be provided at the principle farm group and that it could cluster with a more substantial farm building. It also met the other policy tests within PPS 21. Whilst there may have been a container on site, the accompanying approved Drawing 01 refers to an existing farm building. Having taken all the evidence into account, the proposal does not therefore meet criterion (c) of Policy CTY 10.

16. As the proposal does not meet Policy CTY 10, it is not one of the specified types of development considered to be acceptable in the countryside under Policy CTY 1. As I am not persuaded that there are overriding reasons why the development is essential and could not be located in a settlement, it is contrary to Policy CTY 1 of PPS 21. Accordingly the first and fifth reasons for refusal are sustained.
17. Despite the appellant's argument that they should be given less weight, neither Policy CTY 1 nor Policy CTY 10 are self contained policies and as Policies CTY 13 and 14 set out the criteria for judging the acceptability of new buildings in the countryside they are relevant. Paragraphs 6.70 and 6.77 within the SPPS also states that all development in the countryside must be sited and designed to integrate into its setting, respect rural character and meet other planning and environmental considerations. In terms of Policy CTY 13, there is no existing definition along the eastern site boundary and there is sparse vegetation on the southern and northern boundaries. The appellant disputed the necessity of a visibility splay of 2m x 33m on the southern side of the proposed access. As the road is narrow, the 33m requirement reflects the resultant slower traffic speeds. It is also not accepted that the access would have a non-critical side given the narrowness of the single track road. Whilst it would be positioned behind an existing approximately 3m high mature bank and hedgerow, the appropriate visibility splay requirement of 2m x 33m, the steepness of the roadside bank and the narrowness of the grass verge would require the removal of approximately 33m of this screening along the frontage of the proposed site thus opening up views into the site. The introduction of new planting behind the visibility splays and along the boundaries would take a considerable amount of time to mature. The proposed development would also be sited approximately 20-25m away from the modest agricultural shed, container and sheep pens located in the northern section of the site; these would do little to aid the integration of any development on the appeal site. The proposed development, even if a modest single storey dwelling, would therefore lack long established natural boundaries, have insufficient backdrop and would be unable to provide a suitable degree of enclosure for the proposed development to integrate into the landscape. As a result the dwelling and garage would appear open and exposed in the landscape. The access arrangement would also require a new laneway to run parallel to the Drumaroan Road for approximately 20-25m which would appear incongruous in the landscape and it would also open views of the site works required to facilitate the development which would include approximately 1m of excavation. Although there is a slight drop in the level of the site and the appellant is proposing to lower the proposed location of the development by approximately 1m, from the critical views identified along the significantly lower (approximately 25m) Cushendall

Road and Carey Mill Road, which are judged to be valid places from which to assess the proposal, the development would break the skyline. This would also occur when travelling in either direction along the undulating Drumaroan Road. With inadequate backdrop or vegetation to aid its integration, it would therefore appear as a prominent feature in the elevated landscape.

18. The appellant referred to a number of cases where he considered more prominent dwellings have been permitted, some of which involving excavation. However each case has to be assessed on its own particular merits and the planning authority's justification for these decisions due to their level of integration, lack of visibility, setback from the road, clustering with neighbouring buildings and specific circumstances of the farm holding would appear to distinguish these from the appeal proposal. At any rate, the approval of prominent dwelling/s in other locations would not justify setting aside the policy requirements of Policy CTY 13 in such a sensitive landscape. The second reason for refusal in relation to Policy CTY 13 is therefore sustained.
19. The third reason for refusal related to Policy CTY 14 and paragraphs 6.70 and 6.77 of the SPPS. Although the site differs from that considered under appeal 2015/A0152, it has already been concluded in the current appeal that the proposal would be unduly prominent in the exposed landscape, would not integrate sensitively with a group of existing buildings and that the ancillary works would have an adverse visual impact. The proposal would therefore cause a detrimental change to the rural character of this scenic rural area. Accordingly, the third reason for refusal is sustained.
20. Policy NH 6 of PPS 2 states that planning permission for new development within an Area of Outstanding Natural Beauty will only be granted where it is of an appropriate design, size and scale for the locality and where three criteria are met; objection was raised in relation to criterion (a) of the policy. Irrespective of the suggestion that the dwelling would be of an appropriate traditional design, given that the proposal could not be visually integrated into its surrounding landscape and would have a detrimental impact on the character of this rural area, its siting would not be sympathetic to the special character of the AONB. The fact that the dwelling would be used by someone engaged in agriculture would not justify the proposed unsympathetic development within this AONB. The fourth reason for refusal has therefore been sustained.
21. Whilst it is accepted that planning policy seeks to support the farming community, having assessed all the circumstances in this case, it is not considered that they are such that planning policy should not be applied. From the information presented, I am not persuaded that there has been unfairness or inconsistency in decision making. Accordingly, the appeal must fail.

This decision is based on 1:2500 location map and 1:500 block plan marked Appendix A11 within the appellant's rebuttal evidence.

**COMMISSIONER DIANE O'NEILL**

**List of Appearances**

Planning Authority (Causeway Coast and Glens Borough Council):- Ms Joy McIntyre  
Mr Conor McGarry  
Mr Terry McKinney  
(Transport NI)

Appellant:- Mr Johnny O'Kane  
Mr Mervyn McNeill  
(agent)

**List of Documents**

Planning Authority  
(Causeway Coast and Glens Borough Council):-

Statement of Case PA1  
Including appendices 1-6  
Rebuttal PA 2

Appellant (McNeill Architectural Consultancy):-

Statement of Case A1  
including appendices 1-16  
Rebuttal A 2 including  
appendices A1-11

