

ADDENDUM

LA01/2021/0650/F

1.0 Update

- 1.1 Paragraph 8.7 of the Planning Committee Report refers to a bridge not being considered a building for the purposes of Policy CTY8. Notwithstanding the Drumahaman Bridge is listed on the Listed Buildings Register, it is not a building for the purposes of CTY 8.

2.0 Consideration

- 2.1 When assessing planning policy, it is general practice that a word within the policy is given its everyday meaning within the policy context. Adopting such a position for the purposes of CTY 8 is supported in Paragraph 8 of Planning Appeal 2018/A0088 (Appendix 1).
- 2.2 The everyday meaning of a “*building*” is defined as something built with a roof and walls, such as a house or factory. It is evident that a bridge has neither walls nor a roof and is therefore not a building. While the bridge near to this site may be listed, and is identified within the Listed Buildings database, this is for record keeping purposes only and it is clearly not a building.
- 2.3 To support this interpretation, Policy also states that the proposal must respect the existing development pattern along the frontage in terms of size, scale, siting and plot size – this clearly relates to a building on land along the frontage and not a structure such as a bridge. A bridge or other such structure would not exhibit these elements to be assessed as it has no size, scale, siting within a plot, or plot size to allow such a comparison with the proposed building.

2.4 Furthermore, in the supporting text reference is made in Para 5.34 that:

“Many frontages in the countryside have gaps between houses or other buildings that provide relief and visual breaks in the developed appearance of the locality and that help maintain rural character.”

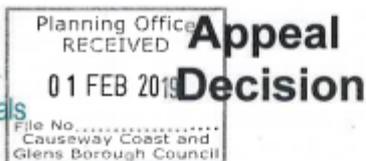
Again, this supports the policy interpretation, as it talks about physical relief from buildings.

2.5 It is also noted that in Planning Appeal 2020/A0042 (Appendix 2), the Commissioner in that appeal explores what constitutes a building for the purposes of CTY 8 and again refers to a *building* being given its *natural, every day meaning* (Paragraphs 6 & 8). In Paragraph 9 of this Appeal, the Commissioner concludes that wing walls, gates or ruins, or a building under construction do not constitute buildings for the purposes of CTY 8. This supports the position adopted in this Addendum that anything other than a building with walls and a roof is not a building for the purposes of CTY 8.

3.0 Recommendation

3.1 That the Committee note the contents of this Addendum and agree with the recommendation to Refuse the application in accordance with sections 1 and 9 of the Planning Committee report.

Appendix 1 – Planning Appeal 2018/A0088



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Appeal Reference: 2018/A0088 (Appeal Site 1)
Appeal by: Mr U Kane
Appeal against: The refusal of outline planning permission
Proposed Development: Proposed site for a new dwelling and garage
Location: 25m north east of 59 Ballinlea Road, Ballinlea Lower, Ballycastle
Planning Authority: Causeway Coast and Glens Borough Council
Application Reference: LA01/2017/0857/O
Procedure: Written representations and accompanied site on 17 January 2019
Decision by: Commissioner D McShane, dated 31 January 2019.

Appeal Reference: 2018/A0089 (Appeal Site 2)
Appeal by: Mr U Kane
Appeal against: The refusal of outline planning permission
Proposed Development: Proposed site for a new dwelling and garage
Location: Adjacent to 59 Ballinlea Road, Ballinlea Lower, Ballycastle
Planning Authority: Causeway Coast and Glens Borough Council
Application Reference: LA01/2017/0858/O
Procedure: Written representations and accompanied site on 17 January 2019
Decision by: Commissioner D McShane, 30 January 2019.

Decision

1. The appeals are dismissed.

Claim for Costs

2. A claim for costs was made by Mr U Kane against Causeway Coast and Glens Borough Council. This claim is the subject of a separate decision.

Reasons

3. The main issues in these appeals are
 - whether the proposed developments would be acceptable in principle; and
 - the impact on visual amenity and rural character.
4. Section 6 (4) of the Planning Act (NI) 2011 requires that the determination of proposals must be in accordance with the local development plan (LDP) unless material considerations indicate otherwise. The Northern Area Plan 2016 (NAP)

operates as a LDP. The appeal sites are located outside any settlement development limit defined in the plan and are within the open countryside; there are no plan policies relevant to my assessment. I therefore turn to other material considerations. As the appeal sites are in the open countryside, Planning Policy Statement 21: Sustainable Development in the Countryside (PPS 21) provides the relevant policy context. PPS 21 is identified by the Strategic Planning Policy Statement (SPPS) as a retained policy document.

5. Policy CTY 1 of PPS 21 lists 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 circumstances wherein planning permission will be granted for housing development are set out. A number of instances when planning permission will be granted for an individual dwelling house are outlined. The Appellant argues that the proposed dwellings constitute the development of a small gap site within an otherwise substantial and continuously built up frontage in accordance with Policy CTY 8. It is also claimed that the proposed dwelling on Appeal Site 2 would be located at a cluster in accordance with Policy CTY 2a.
6. There is planning history in respect of the appeal sites and the land immediately adjacent to the rear. The Appellant argues that as the appeal proposals represent a less intensive form of development, they ought to be approved. However, the outline and reserved matters approvals granted for a dwelling on each appeal site in 2005 and 2008 are no longer extant. Similarly, the outline, reserved matters and full approvals for dwellings granted on land immediately adjacent to the rear in 2003, 2005 and 2008 are no longer extant. Furthermore, the historic approvals were granted by the previous planning authority; the Department of the Environment, in a different development plan and regional planning policy context. In these circumstances, the appeal proposals fall to be considered on their own merits.
7. Policy CTY 8 entitled 'Ribbon Development' states that planning permission will be refused for a dwelling that creates or adds to a ribbon of development. Notwithstanding that this form of development has been consistently opposed, policy goes on to state that an exception will be permitted for the development of a gap site. The amplification text at Paragraph 5.34 is clear that the gap is between houses or other buildings. An exception will be permitted providing four elements are met. Namely, the gap site must be within an otherwise substantial and continuously built up frontage; the gap site must be small; the existing development pattern along the frontage must be respected; and other planning and environmental requirements must be met.
8. The first element that is required in order to qualify as an infill site is the presence of a gap site within a substantial and continuously built up frontage. For the purpose of policy this includes a line of 3 or more buildings along a road frontage. The appeal sites are road frontage and there is a line of no.6 dwellings to the south west (Nos.59 to 63). However, there is no building to the north east. Policy refers to built up frontage and the *gap being between buildings* (my emphasis). The word building must be given its everyday meaning. Notwithstanding that the Council accepts that there are foundations in place to the north east; foundations do not constitute a building and a possible future building cannot be taken into account. As there are only buildings to the south west, there is no gap site.

Accordingly, the appeal sites do not stand within an otherwise substantial and continuously built up frontage as envisaged by policy. The proposals fail to meet the first requirement to qualify as an exception under Policy CTY 8. As there is no gap site, it is not possible to make an assessment of size or determine whether the proposed developments would respect the existing development pattern. Therefore, the appeal proposals also fail to meet the second and third elements required to qualify as an exception.

9. The fourth step of the infill policy in CTY 8 that must be considered is whether the appeal proposals meet other planning and environmental requirements. In the context of this appeal, the Council is concerned about the impact of the proposed developments on visual amenity and rural character.
10. Policy CTY 13 states that planning permission will be granted for a building in the countryside where it can be visually integrated into the surrounding landscape and is of an appropriate design. From the identified viewpoint travelling south along Ballinlea Road, views of the two proposed 5.7m high dwellings and their garages would be screened by vegetation along the north eastern boundary of Appeal Site 1. Furthermore, the proposed dwellings would read against substantial evergreen vegetation along the boundary with No.59. Notwithstanding, that the roadside vegetation has been removed, there would be sufficient vegetation to provide a suitable degree of enclosure for the proposed dwellings and garages on the sites to integrate into the landscape.
11. Policy CTY 14 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. The appeal dwellings would represent two additional incidents of development in the area and as they would not be located within an existing substantially and continuously built up frontage as defined by policy, they would add to a ribbon of development and result in a suburban style build up of development when viewed with existing buildings. As such, the proposed developments would have a detrimental impact on rural character.
12. The appeal proposals fail to comply with the environmental and planning requirements under Policy CTY 14; therefore I conclude that the fourth element required by Policy CTY 8 is not met. The proposed dwellings fail to meet the four elements within Policy CTY 8. Accordingly, the Council has sustained its third and fifth reasons for refusal based upon Policies CTY 8 and CTY 14 of PPS 21 in respect of both appeals.
13. Policy CTY 2a states that planning permission will be granted for a dwelling at an existing cluster provided six specified criteria are met. With respect to Appeal Site 2, the parties dispute the third, fourth and fifth criteria. The Council accepts that there is a cluster of development at this location that appears as a visual entity in the landscape and that subject to good design a dwelling on Appeal Site 2 would not impact adversely on residential amenity.
14. However, the cluster is not associated with the Chapel and Parochial House located to the north east, given the separation distance and intervening agricultural fields. Appeal Site 2 is bound to the south by development in the cluster (No.59), but the remaining three boundaries are with open countryside. Accordingly, development of the site would not be absorbed into the existing cluster but would visually extend into the open countryside and alter its character. Accordingly, the

Council has sustained its fourth reason for refusal based upon Policy CTY 2a of PPS 21 in respect of Appeal Site 2.

15. The appeal sites are not located within a designated Dispersed Rural Community. In this respect, the Council's second reason for refusal based upon Policy CTY 2 of PPS 21 is sustained in respect of both appeals.
16. Policy CTY 1 is clear that other types of development will only be permitted where there are overriding reasons why the development is essential. The two appeal sites were previously used as a builder's yard and the concrete slab bases of previous buildings remain; however these along with the concrete posts and chainlink fencing have minimal visual impact on this countryside location. I have not been persuaded that the development of the sites for housing would constitute betterment. It was argued that the loss of value in the land, given that the historical planning approvals were not implemented, is having a negative impact on the Appellant's business. However, this is not sufficient to merit the approval of two development proposals that are contrary to policy. Accordingly, the Council has sustained its first reason for refusal based upon CTY 1 in respect of both appeals.
17. A DfI Roads representative confirmed at the Site Visit that the required visibility splays of 2.4m x 90m would be achievable, irrespective of whether two separate accesses or a central paired access were to be provided. Accordingly, the Council has failed to sustain its seventh reason for refusal based upon Planning Policy Statement 3: Access, Movement and Parking (PPS 3).
18. Further to the submission of a Preliminary Risk Assessment by the Appellant in his Statement of Case and subject to the imposition of conditions proposed by the Northern Ireland Environment Agency (NIEA): Land and Groundwater Team, the Council withdrew its eighth reason for refusal in relation to impact on the water environment.
19. For the reasons outlined above, the proposed developments fail to comply with policy and therefore both appeals must fail.

This decision is based on the following drawings:-

2018/A0088

CCGBC Drwg No.01: Location Map (Scale 1:2500)
CCGBC Drwg No.02: Proposed Concept Layout (Scale 1:500)

2018/A0089

CCGBC Drwg No.01: Location Map (Scale 1:2500)
CCGBC Drwg No.08: Proposed Concept Layout (Scale 1:500)

COMMISSIONER DMCSHANE

Appendix 2 – Planing Appeal 2020/A0042



Decision

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Appeal Reference:	2020/A0042
Appeal by:	Mr George Alcorn.
Appeal against:	The refusal of outline planning permission.
Proposed Development:	Proposed site for dwelling.
Location:	Land between 80 & 84 Highlands Road Limavady.
Planning Authority:	Causeway Coast & Glens Borough Council.
Application Reference:	LA01/2019/1126/O
Procedure:	Hearing on 15th December 2020.
Decision by:	Commissioner Damien Hannon, dated 12 th January 2021.

Decision

1. The appeal is dismissed.

Reasons

2. The main issues in this appeal are whether the proposed development is acceptable in principle and its impact on visual amenity, rural character and nature conservation.
3. The appeal site is designated as lying within both the countryside and the Ballykelly Moraine Site of Local Nature Conservation Importance (SLNCI) in the statutory Local Development Plan (LDP), namely the Northern Area Plan 2015 (NAP). Planning Policy Statement 21 - Sustainable Development in the Countryside (PPS21) and Planning Policy Statement 2 – Natural Heritage (PPS2), provide the operational policy context relevant to this appeal. However additionally, paragraph 5.72 of the Strategic Planning Policy Statement for Northern Ireland - Planning for Sustainable Development - September 2015 (SPPS) sets out the principle that sustainable development should be permitted, having regard to the LDP and other material considerations, unless harm to interests of acknowledged importance is demonstrated.
4. 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. Policy CTY 8 states that planning permission will be refused for a building which creates or adds to a ribbon of development. The appeal site is a rectangular plot with a frontage of some 50m onto Highlands Road. It is bounded to the south by the curtilage of No. 80 Highlands Road, a two storey detached dwelling. No. 84 a detached, listed dwelling lies to the west of the appeal site. It is set some 200m off Highlands Road and is accessed via a private laneway that follows the northern boundary of the appeal site. The wing walled and gated entrance to No. 84, measuring some 15m wide, fronts Highlands Road at the appeal site's northern boundary. The

collapsed ruins of a stone store fronting the road lie to the north of this entrance beyond which lies a dwelling under construction, also fronting the road. No. 88, a detached dwelling lies behind this dwelling under construction and is clearly visible from the road. A row of four dwellings fronting the road lie to the north of the building under construction.

5. There was no dispute that, due to their road frontage location and the visual linkage between them, a ribbon of development exists along Highlands Road comprising buildings numbered 80 through to 98a. There was also no dispute that the proposed dwelling would add to this ribbon of development as referred to in Policy CTY 8. Policy CTY 8 however, adds that exceptionally, permission will be granted for the development of a small gap site sufficient only to accommodate up to a maximum of two houses within an otherwise substantial and continuously built up frontage. It adds that proposals must respect the existing development pattern along the frontage in terms of size, scale, siting and plot size. The appellant argued that the proposal constituted the development of a small gap site in accordance with Policy CTY 8 and that it was therefore both acceptable in principle and Policy CTY 21 compliant.
6. The second paragraph of Policy CTY 8 states that a substantial and built-up frontage includes a line of three or more buildings along a road frontage without accompanying development to the rear. Section 250 of the Planning (Northern Ireland) Act 2011 (The Act), states that in the act, the word 'building' includes any structure or erection and any part of a building, as so defined. However, for the purposes of policy interpretation as opposed to 'in the act', the word should be given its natural, everyday meaning. It is a matter of fact and degree whether a wall or a partially complete structure ought to be regarded as a building.
7. The Planning (General Permitted Development) Order (Northern Ireland) 2015 (GPDO) gives interpretation in article 2.—(1) and states that in this Order "building" does not include any gate, fence, wall or other means of enclosure. The appellant argued that this specific exclusion of any gate, fence, wall or other means of enclosure was at odds with the definition of building provided in the 2011 Act. He further argued this to demonstrate an ambiguity in the definition of a building and that, in the instance of such ambiguity, he should benefit from its most favourable interpretation.
8. The 2011 Act is primary legislation and provides a definition of a building for the purposes of that act. The GPDO, as a development order, is secondary and subordinate legislation. It does not provide a definition of a building but rather its purpose is to set out classes of development for which it grants planning consent. While primary legislation takes precedence, the act and the order perform different, albeit complimentary functions and I do not therefore accept that any ambiguity exists regarding the definition of a building. In any case I have already concluded that for the purposes of policy interpretation 'building' should be given its natural, everyday meaning.
9. Based on the evidence presented and my own observations, I do not judge the aforementioned wing walls and gates to No. 84, the ruins of the stone store or the dwelling under construction to constitute buildings for the purposes of Policy CTY 8. In these circumstances, the gap in the relevant otherwise substantial and continuous built up frontage lies between No. 80 and No. 94 and exceeds 100m. I do not consider this to be a small gap site as it could accommodate more than two houses while respecting the existing development pattern along the frontage in

terms of size, scale, siting and plot size. In these circumstances, the appeal site does not constitute the exceptional development of a small gap site, acceptable in accordance with Policy CTY 8 and I conclude that the proposal would add to an existing ribbon of development in conflict with Policy CTY 8 of PPS 21.

10. Policy CTY 1 goes on to state that other types of development in the countryside will only be permitted where there are overriding reasons why that development is essential and could not be located in a settlement. No such case however, was advanced and the Council's objection in principle is upheld. The Council's first and third reasons for refusal, based on policies CTY 1 and CTY 8 respectively, are sustained.
11. Policy CTY 13 of PPS 21 states that a new building in the countryside will be unacceptable where any of a number of stated criteria are engaged. Objection was raised on the grounds that the site lacked long established natural boundaries, was unable to provide a suitable degree of enclosure for the buildings to integrate into the landscape and that consequently, the proposal would appear as a prominent feature in the landscape in conflict with criteria (a), (b) and (c). The appeal site is part of an open, sloping field with established, mature vegetation on its northern boundary and the curtilage of No. 80 to its south. Existing roadside vegetation is sparse and any lost through access provision could be replaced and augmented behind the required visibility splays. I conclude the degree of enclosure provided by the existing vegetation, landform backdrop and other buildings to be sufficient to enable an appropriately sited and designed dwelling to adequately integrate into the landscape as opposed to appearing as a prominent feature in it. The Council's third reason for refusal based on Policy CTY 13 is not sustained.
12. Policy CTY 14 relates to rural character and states that a building will be unacceptable where any of a number of stated criteria are engaged. I have already concluded that an appropriately sited and designed proposal would not appear as unduly prominent in the landscape and further conclude that criterion (a) of Policy CTY 14 would not be engaged. The Council also argued that the proposal would result in a suburban style build-up of development when viewed with existing buildings. On approach along the road in either direction, sequential views of the proposed dwelling would be available in conjunction with others comprising the built up frontage along Highlands Road. From this perspective the proposal would appear as suburban style build-up contrary to criterion (b) of Policy CTY 14. I have already concluded that the proposal would add to ribbon development to the detriment of rural character and contrary to criterion (d) of Policy CTY 14. I therefore conclude that the proposal would unacceptably erode rural character and the Council's fourth reason for refusal based on Policy CTY 14 is sustained.
13. The Council, at the hearing clarified that the proposal would not have any adverse impact on the overall earth science conservation interest of the SLNCI. Policy NH 5 of PPS 2 however, states that planning permission will only be granted for a development proposal which is not likely to result in the unacceptable adverse impact on priority species. The Council's concern in this respect was that light emanating from the proposal would adversely impact on bats. In the absence of convincing evidence to the contrary, I am persuaded that any potential harm could appropriately be assuaged through a planning condition controlling light emanation.

14. Policy NH 5 however, also states that planning permission will only be granted for a development proposal which is not likely to result in the unacceptable adverse impact on or damage to known listed features including other natural heritage features worthy of protection. The Council were concerned that, were permission to connect to the main sewer not forthcoming, a septic tank may have an adverse impact on a watercourse some 25m from the appeal site. Again however, in the context of the evidence presented, I consider this matter could be appropriately addressed through a negative planning condition.
15. Paragraph 5.12 of Policy NH 5 states that other natural features worthy of importance can include trees and woodland. Another area of concern for the Council was that of vegetation removal. The retention of the vast majority of existing vegetation, including all mature trees, could be secured by condition. The only vegetation proposed for removal is some sparse roadside hedgerow required for visibility splays. It is proposed to replace and augment this vegetation behind any required sightlines. In this context, I am not persuaded by the submitted evidence that the proposal would result in the unacceptable adverse impact on, or damage to trees and woodland. I conclude that the proposal would comply with Policy NH 5 and that the Council's fifth reason for refusal is not sustained.
16. The Council's first, second and fourth reasons for refusal based on Policies CTY 1, CTY 8 and CTY 14 of PPS 21, that I have found sustained, are determining in this case.

This decision is based on the following drawings stamped received by the Council on 15th October 2019:-

- 1:2500 scale A3 ordnance survey extract numbered 01.
- 1:500 scale 'Proposed Site Layout' numbered 02.

COMMISSIONER DAMIEN HANNON