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|---|---|
| **Update on Development Management Statistics:**<br>• **Planning Applications Received and Decided in the period 01 May 2016 – 31 May 2017** | **28th June 2017** |
| **Planning Committee** | |

| **Linkage to Council Strategy (2015-19)** | |
|---|---|
| **Strategic Theme** | Protecting and Enhancing our Environments and Assets |
| **Outcome** | Pro-active decision making which protects the natural features, characteristics and integrity of the Borough |
| **Lead Officer** | Denise Dickson |
| **Cost:** (If applicable) | N/A |

## 1.0 Background

The ''Protocol for the Operation of the Planning Committee' sets out the requirement to provide monthly updates on the number of planning applications received and decided.

## 2.0 Details

**2.1** Website link 1 and Website Link 2 provide a list of planning applications received and decided respectively by Causeway Coast and Glens Borough Council in the month of May 2017. Please note that Pre-Application Discussions; Certificates of Lawful Development – Proposed or Existing; Discharge of Conditions and Non-Material Changes, have to be excluded from the reports to correspond with official validated statistics published by DFI.

**2.2** Table 1 below details the number of planning applications received and decided as well as the number of live planning applications in the system and those in the system over 12 months. Please note that these figures are unvalidated statistics extracted from internal management reports.

**Table 1 Applications Received, Decided and Live**

| Applications Received | April 2017 | May 2017 |
|---|---|---|
| Received | 95 | 124 |
| Decided | 66 | 103 |
| Live >12months | 74 | 75 |
| Total Live | 665 | 676 |

Source: Unvalidated Statistics; Excludes: Pre-Application Discussions; Proposal of Application Notices; Certificate of Lawful Development Proposed or Existing; Discharge of Conditions; Non-Material Change.

**2.3** The number of applications received has risen again to 124 which is up 29 more than April, this increased activity is likely due to agents returning after the holiday period. Staff issued 103 planning application decisions, plus 4 Discharge of Conditions,1 Certificate of Lawful Development Proposed/ Existing application, 1 Proposal of Application Notice and 7 Non-Material Change. Again, this increased level of activity is attributed to staff returning after the holiday period. The number of live applications in the system has risen to 676.

**2.4** Sustained progress continues to be made in relation to the number of over 12 months applications. Work continues to reduce these older applications. Table 2 below provides a further breakdown of the over 12 month applications in the system. An improvement continues to be made in the 12-18 months applications. The weekly monitoring of these figures continues and staff are conscious of the need to prioritise their efforts in this area of work.

**Table 2 Breakdown of over 12 month applications (Sept 2016 – April 2017)**

| Applications Received | Sept | Oct | Nov | Dec | Jan | Feb | Mar | Apr | May |
|---|---|---|---|---|---|---|---|---|---|
| 12-18 months | 40 | 31 | 36 | 39 | 39 | 45 | 37 | 32 | 30 |
| 18-24 months | 17 | 15 | 17 | 18 | 20 | 13 | 13 | 14 | 16 |
| >24 months | 33 | 32 | 32 | 33 | 30 | 30 | 29 | 28 | 29 |
| Total | 90 | 78 | 85 | 90 | 89 | 88 | 79 | 74 | 75 |

Source: Unvalidated Statistics; Excludes: Pre-Application Discussions; Certificate of Lawful Development Proposed or Existing; Discharge of Conditions; Non-Material Change.

**2.4** Table 3 below details the number of appeal decisions issued since 1 April 2016 showing the continued high quality of decision making taken by both Planning Officers and supported by the Planning Committee. Please note that these figures are unvalidated statistics extracted from internal management reports. A copy of the reports relating to the decisions issued by the PAC in April 2017 are also attached for your information.

**Table 3 Appeals to the Planning Appeals Commission (PAC)**

| Appeals lodged with PAC | April 2016/ March 2017 | April 2017 | May 2017 |
|---|---|---|---|
| Upheld | 5 | 0 | 2 |
| Dismissed | 21 | 1 | 5 |
| Total Appeal decisions | 26 | 1 | 7 |
| % of Appeals Dismissed | 80.77% | 100% | 71.42% |

Source: Unvalidated Statistics

**2.5** Table 4 details the number of referral requests received from elected members under Part B of the Scheme of Delegation in Q1 of 2017/18. One previously referred applications are due for determination at the May Planning Committee Meeting. From April 2017, 3 out of 11 recommendations have been overturned by the Planning Committee.

**Table 4 Referrals Requested in Q1 2017/18**

| Referral Request | Requestor | Application Ref | Date of Planning Committee | Planning Officer Recommendation Agreed/Disagree |
|---|---|---|---|---|
| **Q1** | Cllr Fielding | LA01/2016/1157/F | | |
| | Cllr Clarke | LA01/2016/1070/F | | |
| | Cllr Douglas | LA01/2017/0093/O | | |
| | Cllr McShane | LA01/2017/0093/O | | |
| | Cllr McLean | LA01/2016/0107/F | | |
| **TOTAL** | 5 | | | |

Source: Unvalidated Statistics

## 3.0 Recommendation

**3.1** **IT IS RECOMMENDED** that the Planning Committee note the update on the development management statistics.

Planning Appeals Commission

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**Website: www.pacni.gov.uk**

Mr Michael Wilson
Causeway Coast & Glens Council
Local Planning Office
County Hall
Castlerock Road
Coleraine
BT51 3HS

Your Reference: C/2011/0341/O

Our Reference: 2015/A0126

Date: 10 May 2017

Dear Sir/Madam

**THE PLANNING ACT (NORTHERN IRELAND) 2011**
**APPEAL: Mr Marco Taylor**
**Appeal against condition restricting energy crop materials to be accepted and processed in the proposed anaerobic digestion facility and feedstock storage area**
**Lands adjacent to 15 Drumslade Road, Coleraine**

Please find enclosed a copy of decision in relation to the above appeal.

Yours faithfully

**Johnathan Nelson**

Planning Appeals Commission

# Appeal Decision

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| | |
|---|---|
| **Appeal Reference:** | 2015/A0126 |
| **Appeal by:** | Marco Taylor |
| **Appeal against:** | The conditional grant of full planning permission. |
| **Proposed Development:** | Erection of agricultural anaerobic digestion facility, feedstock storage area (SILOS), with a Combined Heat and Power Plant unit (CHP), a gas stack, boundary fence, staff car park and associated works to access road (amended access details). |
| **Location:** | Lands adjacent to 15 Drumslade Road, Coleraine |
| **Planning Authority:** | Causeway Coast and Glens Borough Council |
| **Application Reference:** | C/2011 /0341/F |
| **Procedure:** | Informal Hearing on 22 February 2017. |
| **Decision by:** | Commissioner George Scott dated 9 May 2017. |

## Decision



1. The appeal is allowed and Condition 4 of planning permission C/2011/0341/F is deleted.

## Preliminary Matter

2. Commissioner Martin issued a decision on this appeal on 18 July 2016, having conducted a hearing on 9 February 2016. Following an application for judicial review, that decision was quashed in the High Court and remitted to the Commission for reconsideration. In reassessing and determining the appeal I have taken account of all background papers, the written submissions made in association with the earlier appeal proceedings and the further written submissions and oral evidence provided in association with the hearing I conducted on 22 February 2017.

## Reasons

3. In this appeal the appellant is seeking to have removed condition 4 of planning permission C/2011/0341/F, granted by Causeway Coast and Glens Borough Council on 1 June 2015. The condition reads as follows:

   "*The energy crop materials to be accepted and processed shall be restricted to those originated from the associated farm holding only.*"

   *Reason: In the interests of amenity of residents living in the surrounding area and in the interest of environmental pollution.*

4. Section 58(1) of the Planning Act (Northern Ireland) 2011 (the Act) provides for appeals against the grant of planning permission subject to conditions. Section 58(4) of the Act states that on such an appeal the Commission may reverse or vary any part of the

decision, whether the appeal relates to that part thereof or not; and may deal with the application as if made to it in the first instance. In other words, the Commission has the statutory power to vary conditions other than those challenged by the appellant or to take the permission away altogether. It therefore falls for me to consider the arguments presented by the Third Party objectors in relation to the means of and safety of access to the site from the public road system and whether the development should have received permission in the first place.

5. In considering the points of concern raised by the Third Parties regard has to be given to the planning history of the appeal site. The appellant made a Section 54 application (LA01/2015/0895/F), to Causeway Coast and Glens Borough Council (the Council) to develop the appeal site without compliance with condition 4 of planning permission C/2011/0341/F. Section 54(3) makes it clear that the authority determining the application (in this case the Council) must consider only the question of the condition subject to which planning permission should be granted. There are two possible outcomes to a Section 54 application – either permission is granted subject to different or no conditions; or the application is refused on the basis that the same conditions attached to the previous permission should continue to apply. The Council granted planning permission for the Section 54 application on 23 December 2015 repeating the previous conditions on the earlier C/2011/0341/F approval, but amending the wording of condition 4 to read as follows:

*"The energy crop materials to be accepted and processed shall be restricted to those originated from the associated farm holding and any further land taken on a lease agreement, such as land taken in conacre"*

*Reason: In the interests of amenity of residents living in the surrounding area and in the interest of environmental pollution.*

6. It is important to recognise that the most recent planning permission granted by the Council, under LA01/2015/0895/F, is not a variation of the earlier approval (C/2011/0341/F) but rather is a second planning permission for the same development. The significance of this second planning permission is that the applicant could chose to implement that approval and not rely on the permission in C/2011/0341/F. That being so it represents a realistic fallback, making it somewhat irrelevant to reassess the principle of granting planning permission for the anaerobic digestion facility. Accordingly my consideration in this appeal will focus primarily on whether condition 4 of C/2011/0341/F should be retained, deleted or modified.

7. The 2011 Planning Act requires that any determination under the Act must be made in accordance with the local development plan (LDP), unless material considerations dictate otherwise. The Northern Area Plan 2016 (NAP) operates as the LDP for the area wherein the appeal site is located and places it in the open countryside. It also identifies the site as falling with the Causeway Coast Area of Outstanding Natural Beauty (AONB). The LDP contains no material policies for the type of development being proposed. There are, however, relevant regional planning policies.

8. 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, including the retention of certain existing planning policy statements. Amongst the identified retained documents the most relevant for this proposal are Planning Policy Statement 21: Sustainable Development in the

Countryside (PPS 21) and Planning Policy Statement 18: Renewable Energy. Supplementary Planning Guidance (SPG) in the form of *Best Practice Guide* (BPG) to PPS 18 is also material, as is the Draft Supplementary Planning Guidance (DSPG) to PPS 18 entitled *'Anaerobic Digestion'* (AD). The DSPG remains in draft form and in that respect has more limited weight than a final policy statement. However, I concur with the expressed view of the respective parties that it provides the most up to date advice and guidance specific to Anaerobic Digestion.

9. The SPPS, in paragraph 5.65, sets out a number of tests against which to assess the propriety of the imposition of planning conditions. Two of those tests are whether a condition is precise and enforceable. The Council acknowledged that when it imposed condition 4 it did so on the basis that all waste arriving at the Anaerobic Digester (AD) would be derived from agriculture on the applicant's adjoining land holding and should be so restricted. However, the information submitted with the application stated that the proposed development was for a 500Kw Centralised Anaerobic Digester (CAD), indicating that it was more than just a small farm based digester. The Council was aware, from advice provided by the Department of Agriculture and Rural Development (DARD), that a 500Kw facility would require some 600 acres of land to service it (on a formula ratio of 1.2 acres to produce 1 Kw of power) whereas the applicant only had 485 acres available to him.

10. Paragraph 5.4 of the DSPG acknowledges that most proposals for farm based AD in Northern Ireland will involve the import of a proportion of feedstock material onto the farm to complement the feedstock originating from within the unit. Indeed, the generating capacity and capability of the proposed development points to the likelihood that some of the feedstock servicing will have to come from sources and locations beyond the lands available to the applicant in the vicinity of the CAD's location.

11. As the appellant has rightly pointed out, the wording of condition 4, in referring to material which originates from the **'associated farm holding only'** (my emphasis) does not specify what lands this comprises. This could change over time while the plant itself is not legally tied to the ownership or operation of the farm. The condition is neither precise nor enforceable and nor does it strike me as being reasonable in all other respects. I consider that condition 4 is in conflict with the scale and nature of development proposed and that the Council has not justified its imposition.

12. I am equally not persuaded of the merits of the revised wording of condition 4 put forward by the Council. In accepting that farm based AD plants could take feedstock material from a number of neighbouring farms, paragraph 5.4 of the DSPG does not require the origin of the material to necessarily be within the control of the operator of the plant. The DSPG does, however, recognise that the transport/traffic implications of the movement of any material are important and should be fully assessed. In this respect, the Council quite appropriately attached conditions 9 and 10 to the approval, seeking to ensure that access to the CAD should only be taken from the proposed dedicated new access laneway identified on the approved drawing 01 date stamped received 13th February 2014. I agree with the Council and objectors that such conditions are necessary to protect the amenity and safety of those residential properties that take access off the existing Drumslade Road. The appellant is not, however, seeking to remove conditions 9 and 10 of the approval and I see no basis for doing so. Nor do I consider that a different wording should be substituted for those conditions. During my site inspection I was able to travel along the length of the new laneway by private car, albeit slowly. I agree with the Council that precisely how this private access is constructed or the surface material

used is a matter for the appellant to consider. It would not be appropriate or necessary, as suggested by the objectors, to seek to bring the proposed access laneway up to adoptable road standards. What is critical is that the access is fit for purpose and is used by all external traffic bringing feedstock material to the CAD facility. Any breach of conditions 9 and 10 will be a matter for the Council to address.

**COMMISSIONER GEORGE SCOTT**

## List of Appearances

| | |
|---|---|
| Planning Authority: - | Mr Michael Wilson |
| Appellant(s):- | Mr David Donaldson (Planning Consultant) |
| Third Parties: - | Mr N Moore (3 Drumslade Road)<br>Mrs A Moore (3 Drumslade Road) |
| | Mr R Stirling (19 Drumslade Road)<br>Mrs Y Stirling (19 Drumslade Road) |
| | Mr D Roughan (8 Drumslade Road) |

## List of Documents

| | | |
|---|---|---|
| Planning Authority: - | "A1" | Original Statement of Case (SoC) |
| | "A2" | Comments letter of 15/1/16 |
| | "A3" | Supplementary SoC |
| Appellant(s):- | "B1" | Original SoC |
| | "B2" | Supplementary SoC |
| Third Parties: - | "C1" | Original SoC (Mr N Moore) |
| | "C2" | Supplementary SoC (Mr N Moore) |
| | "D1" | Original SoC (Mr R Stirling) |
| | "D2" | Comments of 15/1/16 (Mr R Stirling) |
| | "D3" | Supplementary SoC (Mr R Stirling) |
| | "D4" | Supplementary SoC (Mrs Y Stirling |
| | "E1" | Original SoC (Mr D Roughan) |
| | "E2" | Supplementary SoC (Mr D Roughan) |
| | "F1" | Supplementary SoC (Mr M Gray) |

Planning Appeals Commission

# Appeal Decision

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| | |
|---|---|
| **Appeal Reference:** | 2016/A0162 |
| **Appeal by:** | Stephen & Rosemary Lomas |
| **Appeal against:** | The refusal of outline planning permission |
| **Proposed Development:** | Self-catering holiday cottage complex |
| **Location:** | 42 Priestland Road, Bushmills |
| **Planning Authority:** | Causeway Coast & Glens Borough Council |
| **Application Reference:** | LA01/2015/0564/O |
| **Procedure:** | Written representations and accompanied site visit on 29 March 2017 |
| **Decision by:** | Commissioner Brigid McGlinchey dated 22 May 2017 |

**Decision**



1. The appeal is dismissed.

**Preliminary Matter**

2. The decision notice referred to Drawing 01 which had been submitted with the planning application. This drawing included a conceptual layout showing six holiday cottages to be located on land to the rear of an existing B&B with no indicative access to the public road. The accompanying P1 form however indicated that the proposed development would involve use of an existing unaltered access. The appellant requested consideration of an amended drawing sent to the planning authority on 23 March 2016 during the processing of the planning application and sought that this formed this formed the basis for the appeal. The amended drawing included additional lands for access purposes showing visibility splays extending either side of an existing access and also indicated a reduction in the number of the proposed cottages. This was to address Transport NI indication that visibility splays of 4.5m x 146m were required in each direction at the existing access. The extent of the impingement on third party lands is not however accurately depicted on the amended drawing which only shows visibility splays of approximately 75m either side of the existing access. Whilst the necessary visibility splay to the northeast of the existing access is currently available across the forecourt of an adjacent filling station, it was evident from the site visit that notwithstanding the verge to the front of the appellant's property, the visibility splay to the southwest would extend across land that is outside his ownership and control.

3. Section 42 of the Planning Act (Northern Ireland) 2011 requires that the Council must not entertain an application for planning permission in relation to any land unless it is accompanied by one of four certificates. The purpose of an Article 42 certificate is to ensure that certain persons likely to be interested in or affected by the outcome of a planning application are notified of it. A completed Certificate (c) indicates that the requisite notice of the application has been given by or on behalf of the applicant to each person who at the beginning of the period of 21 days ending with the date of the

application in relation to the designated land or any part thereof was in actual possession of the designated land. An accompanying certificate (c) would be necessary in respect of the amended drawing. Though the appellant stated that the amended drawing was accompanied by a revised application, the planning authority disputed this. It provided a copy of a letter forwarded to the applicant's agent on 4 April 2016 which sought a revision to the relevant section of the P1 form. An amended certificate was not received by the planning authority at that time and it has not been provided as part of the appellant's evidence to the appeal. In the absence of a completed certificate (c), I cannot be certain that the requisite notice has been served. Though the amended drawing does not change the nature of the proposal and reduces the number of cottages, there would nonetheless be potential prejudice to an interested party who may not be aware of the proposed changes in respect of the required visibility splays. The appeal is therefore considered on the basis of Drawing 01 that originally accompanied the planning application.

**Reasons**

4. The main issues in this appeal are:
   - whether the proposal is acceptable at this location in the countryside;
   - whether a Drainage Assessment is necessary;
   - the potential for contamination; and
   - the safety of the proposed access arrangements.

5. The Planning Act (NI) 2011 requires that the determination of proposals must be in accordance with the local development plan unless material considerations indicate otherwise. The relevant plan in this case is the Northern Area Plan 2015 which places the appeal site in the rural area. The Plan contains no specific policies or designations that are of assistance in the determination of this appeal. The Strategic Planning Policy Statement for Northern Ireland: Planning for Sustainable Development (SPPS) is material to all decisions on individual planning applications and appeals. The SPPS sets out the transitional arrangements that will operate until the local authority has adopted a Plan Strategy for the whole of the council area. During this transitional period, planning authorities will apply the SPPS and retained planning policy statements. The relevant retained policy documents in this case are the Planning Policy Statement 21: Sustainable Development in the Countryside (PPS21), PPS16: Tourism, Planning Policy Statement 15: Planning and Flood Risk (PPS15) and PPS3: Access, Movement and Parking.

6. Paragraph 6.260 of the SPPS allows for appropriate self-catering accommodation particularly in areas where tourist amenities and accommodation have become established or likely to be provided as a result of tourism initiatives, such as the Signature Projects, or a new or extended holiday park that must be a high quality and sustainable form of tourism development. The proposal is for a self-catering tourist scheme beside an established B&B that is independent of any such tourist initiative and the appellant has presented no arguments in support of the proposal in this regard. In considering the other relevant policy context, Policy CTY1 of PPS21 identifies a range of types of development which in principle are considered to be acceptable in the countryside. One of these is tourism development in accordance with the TOU policies of the Planning Strategy for Rural Northern Ireland (PSRNI). The TOU policies in the PSRNI have since been superseded by policies within PPS16 which provides the prevailing policy context.

7. Policy TSM5 of PPS16 indicates that planning approval will be granted for self-catering units of tourist accommodation in the countryside in one of three

circumstances. The appellant argued that the proposal fell within circumstance (a) which relates to one or more new units all located within the grounds of an existing hotel, self-catering complex, guest house or holiday park. Notwithstanding that the adjacent B&B provides overnight accommodation for visitors in 3 separate rooms and falls within the minimum quantum of provision to that for a guesthouse as defined in the Tourism (NI) Order 1992 and referred to in Appendix 1 of PPS16, a B&B is nonetheless identified as a separate and distinct category of tourist establishment under the Tourism Order. The proposal is not within the grounds of one of the listed tourist establishments identified by the policy. The policy goes on to state that under circumstance (a), the self-catering development is also required to be subsidiary in scale and ancillary to the primary tourism use of the site. I consider that the primary use of a B&B premises is not tourism but rather a residential use which places it within Class C1 of the Planning (Use Classes) Order (NI) 2015. A Guest House in contrast falls within a different and separate use category – Class C2. The existing B&B is a detached single storey dwelling. The proposal for six units of self-catering accommodation within three new semi-detached buildings cannot be considered to be subsidiary in scale and ancillary to the B&B. I find that the proposal does not fall within circumstance (a) and there was no arguments advanced by the appellant in relation to the other circumstances permissible under Policy TSM5.

8. No evidence has been presented to suggest that the proposal complies with any of the other specified types of development considered to be acceptable in principle in the countryside under Policy CTY1. Policy CTY1 states that other types of development will be permitted where there are overriding reasons why that development is essential and could not be located in a settlement. Notwithstanding that Tourism NI may be in favour of the proposal and are willing to back marketing and design costs, this does not demonstrate that the proposal is essential. I conclude that the proposal is contrary to Policy CTY1 and consequently to the SPPS. The planning authority has sustained its first reason for refusal.

9. Notwithstanding that the principal of development is not acceptable, I consider the other matters raised in this appeal. Policy TSM7 of PPS16 sets out design and general criteria that a proposal for tourism use should adhere to. As the appeal proposal relates to an outline application, I am satisfied that if the principle of the proposal had been deemed acceptable, a high standard of landscaping arrangements in accordance with published guidance could have been secured by the application of appropriately worded conditions. In this regard, the planning authority has not sustained its third reason for refusal.

10. Policy FLD3 of PPS15 deals with surface water (pluvial) flood risk outside flood plains and indicates that a Drainage Assessment (DA) is required for all development proposals that exceed certain thresholds. I note that the rationale for the Rivers Agency consultation response advising that a DA was required was based on the size of the development site being 0.17ha. The critical threshold in the policy however is in respect of a development site in excess of 1 hectare which is not the size and the appeal site falls well below this parameter. The planning authority referred to another threshold which is a change of use involving new buildings and / or hardstanding exceeding 1000 square metres in area. The conceptual layout plan however would suggest to me that just over half the appeal site would be covered by the proposed new buildings and access way and consequently the critical threshold would not be surpassed. I conclude that a DA would not be required under Policy FLD3 and the planning authority has not sustained its second reason for refusal.

11. Paragraph 4.12 of the SPPS set out some adverse environmental impacts that may be associated with a development including water quality and indicates that planning

authorities in consultation with stakeholders will be best placed to identify and consider all relevant environmental considerations for their areas. The appeal site is juxtaposition to a filling station and both the Waste Management Unit (Land & Groundwater team) of DAERA (WMU) and Environmental Health have indicated that activities adjacent to the site may have caused the land to be affected by contamination. On the day of the site visit it was apparent that there was evident oil based surface contamination on the grass of the appeal site. WMU advised that further supporting environmental information would be required to assess and identify the extent of any contamination on the site and the potential adverse impacts on the water environment. Environment Health advised that as a minimum, a desk survey and preliminary risk assessment be completed to consider any potential contamination risks. The appellant provided no information on this matter either in support of the application or to the appeal. It therefore has not been demonstrated that there would be no detrimental impact on the water environment. The planning authority has sustained its fourth reason for refusal.

12. The proposed access arrangement for the development involves the alteration of the existing access serving the B&B. Policy AMP2 of PPS3 permits the intensification of the use of an existing access onto a public road where such access will not prejudice road safety or significantly inconvenience the flow of traffic. The policy indicates that the acceptability of access arrangements will be assessed against the published guidance in Development Control Advice Note 15: Vehicular Access Standards (DCAN15). This document sets out the current standards for sightlines that will be applied to both a new access and the intensified use of an existing vehicular access onto public roads. Based on the guidance in DCAN15 and the consultation response of Transport NI, the requisite sightline in each direction at the point of access onto the public road is 4.5m x 146m. The existing access is substandard in that it requires improvement to the visibility splay to the southwest. The necessary visibility splays are not shown on the drawing considered as part of this appeal. Nonetheless, a negative condition requiring their provision prior to the use of the site becoming operational could be normally be attached to ensure that these requirements are fully met and maintained. However, in this case as third party land is required on whom requisite notice has not been served under Section 42 of the Planning Act, a negative condition would consequently not be appropriate. The planning authority has therefore sustained its fifth reason for refusal.

This decision is based on Drawing 01: 1:2500 scale Site location plan with concept layout plan that was submitted with the planning application and date stamped received 11 August 2015.

**COMMISSIONER BRIGID McGLINCHEY**

**List of Appearances**

| | |
|---|---|
| Planning Authority:- | S O'Neill<br>B McLaverty, Environmental Health |
| Appellants:- | A Graham, Agent<br>R Lomas |

**List of Documents**

| | |
|---|---|
| Planning Authority:- | C1 Statement of case + Appendices<br>C2 Rebuttal + Appendices |
| Appellants:- | A1 Statement of case |

Planning Appeals Commission



# Appeal Decision

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| | |
|---|---|
| **Appeal Reference:** | 2016/A0178 |
| **Appeal by:** | Mr James McCotter |
| **Appeal against:** | The refusal of outline planning permission |
| **Proposed Development:** | Infill dwelling and garage |
| **Location:** | Lands between Nos 30 and 34 Drumsaragh Road, Kilrea |
| **Planning Authority:** | Causeway Coast & Glens Borough Council |
| **Application Reference:** | LA01/2016/0395/O |
| **Procedure:** | Written representations and accompanied site visit on 12 May 2017 |
| **Decision by:** | Commissioner Pamela O'Donnell, dated 23 May 2017 |

## Decision

1. The appeal is dismissed.

## Preliminary Point

2. The Appellant submitted an amended site location plan at appeal stage in response to an objection relating to the proposed access arrangements. The amended plan sets out a revised access position and denotes the required visibility splays. As a result, the Council withdrew their objection on road safety grounds as set out in their fourth reason for refusal. Taking into account the relevant case law and the applicable legal tests, I find that the revised plan is admissible. It therefore forms part of the appeal decision.

3. The Council introduced an objection on visual integration grounds at appeal stage. The Appellant was able to comment on this issue. As such, no prejudice arises.

## Reasoning

4. The main issues in the appeal are: (i) whether the proposal is acceptable in principle in the countryside, (ii) whether it is capable of being visually integrated into the landscape and (iii) whether it would adversely impact on rural character.

5. The Planning Act (Northern Ireland) 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 2016 (NAP) operates as the local development plan for the area where the appeal site is located. The NAP places the appeal site outside any settlement limit and within the countryside. The NAP contains no material policies for the type of development proposed. There are, however, relevant regional policies and these are considered below.

6. 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 and it retains certain existing planning policy statements. Amongst these is Planning Policy Statement 21: Sustainable Development in the Countryside (PPS21). Taking into account the transitional arrangements, the retained PPS21 provides the relevant policy context for the appeal proposal. Policy CTY1 thereof indicates that there are types of development acceptable in principle in the countryside. One of these is the development of a small gap site within an otherwise substantial and continuously built up frontage in accordance with Policy CTY8. It follows that if a proposal satisfies Policy CTY8, it would also satisfy Policy CTY1.

7. Policy CTY8 of PPS21 is entitled Ribbon Development. It states that planning permission will be refused for a building which creates or adds to a ribbon of development. Paragraph 5.32 states that ribbon development is detrimental to the character, appearance and amenity of the countryside. Even though this type of development has been consistently opposed, policy goes on to say that an exception will be permitted. This exception relates to 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, provided this respects the existing development pattern along the frontage in terms of size, scale, siting and plot size and meets other planning and environmental requirements. The policy defines a substantial and built up frontage as including a line of three or more buildings along a road frontage without accompanying development to the rear.

8. It was common case between the parties that the terrace dwellings at Nos 20 – 30 Drumsaragh Road and No 36 have frontage to the road and form a substantial and built up frontage as envisaged by the policy. The area of disagreement centred on the buildings at No 34 and whether they shared frontage with the road.

9. The buildings at No 34 connect with the road via its access driveway. Whilst there is a recent Lawful Development Certificate for a domestic garden to the front of No 34, the garden area does not extend from the dwelling down to the road frontage and across the width of the plot. Rather, it follows the line of the access driveway and peters out to measure some 5m at the access to the road. This equates to around 14% of the overall plot width. No 34 is also separated from the road by an intervening agricultural field and though the garden area has encroached into part of this field, No 34 reads as being physically separated from the road by the field. Notwithstanding the narrow strip of garden, the access driveway is the predominant feature that connects with the road on the ground. A narrow garden strip does not constitute frontage to a dwelling and access arrangements including visibility splays with hedging behind do not constitute 'built up frontage' by their nature. A building has frontage to the road if the plot on which it stands abuts or shares a boundary with the road. In this case, the plot at No 34 does not share a boundary with the road for the reasons given. Therefore No 34 does not have frontage to the road.

10. In accordance with paragraph 5.34, it is the gap between buildings rather than the appeal site that falls to be considered when assessing infill proposals. The fact that No 34 does not form part of the substantial and continuously built up frontage means that the space between the relevant development i.e. Nos 30 and 36

constitutes the 'gap' for the application of the policy. This gap measures around 110m. The average plot size along the frontage is around 15m and this takes into account the variation in plot sizes. The appeal site is around twice that at some 30m. When one takes into account the existing development pattern along the frontage in terms of plot size, the gap (at over 100m) could readily accommodate more than the maximum two dwellings specified in the policy. Therefore while the gap is within a substantial and continuously built up frontage, it is not small and it could physically accommodate more than two dwellings. Furthermore, the proposed set back would also fail to respect the predominant development pattern along the frontage. For these reasons the site does not represent an exception to the policy and the proposal fails to satisfy Policy CTY8. Even if No 34 was frontage development, the gap between buildings would be some 80m and the average plot around 18m. The gap would still be able to accommodate more than two dwellings. The terrace plots cannot be discounted from the analysis as they form part of the frontage development before me.

11. Ribbon Development is not comprehensively defined in the policy. However, paragraph 5.33 indicates that ribbon development does not necessarily have to be served by individual accesses nor have a continuous or uniform building line. Buildings sited back, staggered or at angles and with gaps between them can still represent ribbon development if they have a common frontage or they are visually linked. Accordingly, ribbon development can comprise buildings that do not share a road frontage. Policy CTY14 of PPS21 relates to rural character. It states that a new building will be unacceptable where it creates or adds to a ribbon of development. Given that the proposal would visually link with the existing buildings along the road (the terrace block and Nos 34 & 36) from the critical views identified, it would constitute ribbon development and result in suburban style build up detrimental to the rural character of the area. For these reasons, the proposal fails to comply with policies CTY 8 and CTY14. The second and third reasons for refusal are sustained.

12. Policy CTY13 of PPS21 relates to the integration of buildings into the countryside. The Councils' sole argument in this regard hinged on a concern that the proposal would create a large front garden area which would offend the policy. However, the proposal seeks permission for a dwelling and garage set back from the road some 40m with a hedge to be planted in the middle of the site. As the proposed garden area is not shown as extending to the road, the objection on this ground is therefore misplaced and is not sustained.

13. The mixed character between the frontage development to the north and south of the appeal site and the difference in the speed limit does not outweigh the failure of the proposal to meet the policy requirements. The approved infill dwellings on Boleran Road were in respect of gap sites that allowed for two dwellings on the basis of the development pattern in that area. The issues in this appeal are specific to this site and its surroundings and direct comparables are rare. In appeal decision 2016/A0082 there was no intervening agricultural field between the buildings and the frontage. It is therefore distinguishable to this case and was considered in its own evidential context. It does not justify approving a proposal that is contrary to policy. Given the revised access arrangements, I am satisfied that the proposal would not compromise road safety and I am reinforced in my view by the lack of objection from Transport NI.

14. The proposal does not represent one of the types of development considered acceptable in principle in the countryside. Policy CTY1 of PPS21 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. There was no persuasive evidence to demonstrate that the proposal is essential. The proposal is therefore also at odds with Policy CTY1 of PPS21. The first reason for refusal is sustained.

15. As the reasons for refusal are sustained, the appeal must fail.

This decision is based on the Site Location Plan 1:2500 @ A3 - Drawing No PD-01 submitted at appeal.

**COMMISSIONER PAMELA O'DONNELL**

**List of Appearances**

| | |
|---|---|
| Planning Authority:- | Ms H Clarke (Causeway Coast & Glens Borough Council) |
| Appellant(s):- | Ms C Gourley (Agent)<br>Mr J McCotter (Appellant)<br>Mr P McCotter (Family member)<br>Ms A McCotter (Family member) |

**List of Documents**

| | |
|---|---|
| Planning Authority:- | "A" Statement of Case<br>"C" Rebuttal |
| Appellant(s):- | "B" Statement of Case<br>"D" Rebuttal |

Planning Appeals Commission

# Appeal Decision

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|---|---|
| **Appeal Reference:** | 2016/A0169 |
| **Appeal by:** | Mrs Annie McCallum |
| **Appeal against:** | The refusal of outline planning permission |
| **Proposed Development:** | Refurbishment and extension of existing derelict dwelling |
| **Location:** | 320m NW of No.46 Point Road, Magilligan |
| **Planning Authority:** | Causeway Coast & Glens Borough Council |
| **Application Reference:** | LA01/2016/0480/O |
| **Procedure:** | Written representations and Commissioner's site visit on 29 March 2017 |
| **Decision by:** | Commissioner Brigid McGlinchey dated 15 May 2017 |



**Decision**

1. The appeal is dismissed.

**Reasons**

2. The main issue in this appeal is whether the proposal is acceptable in principle in the countryside.

3. The Planning Act (Northern Ireland) 2011 requires the decision maker to have regard to the local development plan, so far as material to the application, and to any other material considerations. In the Northern Area Plan 2016 the appeal site is located in the rural area within the Bienevenagh Area of Outstanding Natural Beauty (AONB). The Plan contains no specific policies or designations that are of assistance in the determination of this appeal. The Strategic Planning Policy Statement for Northern Ireland: Planning for Sustainable Development (SPPS) is material to all decisions on individual planning applications and appeals. The SPPS sets out the transitional arrangements that will operate until the local authority has adopted a Plan Strategy for the whole of the council area. During this transitional period, planning authorities will apply the SPPS and retained planning policy statements. Paragraph 1.12 of the SPPS states that any conflict between it and any retained policy must be resolved in the favour of the SPPS.

4. There are two attached structures on the appeal site which are in a significantly ruinous state. The larger structure has a gable wall with a chimney breast and fireplace and a partially intact front wall up to plate level with evident window and door openings. Only rubble remains of the other two walls. The evident remains of the attached structure are a corner of a gable and a 3m length of wall that is about 1m high. There was no dispute that the larger structure with a footprint of approximately 65sqm was formerly a dwelling and the other smaller structure being an outbuilding. However, in their current ruinous state the structures have a

nil use and I agree with the planning authority that the larger one cannot be regarded as an existing dwelling. The proposal involving its refurbishment and the addition of a much larger extension to the rear as envisaged in the concept plan accompanying the planning application is to facilitate the reinstatement of the residential use. As it is not an existing dwelling, policies regarding domestic extensions and alterations cannot apply to the proposal. The retained policy document under the SPPS which provides that relevant policy context is Planning Policy Statement 21: Sustainable Development in the Countryside (PPS21).

5. Policy CTY1 of PPS21 lists the types of development that are, in principle, acceptable in the countryside and will contribute to the aims of sustainable development. It sets out instances where an individual dwelling in the countryside will be permitted. One of these is the conversion of a non-residential building to a dwelling in accordance with Policy CTY4. This was the policy context under which the proposal was determined by the planning authority and was the basis for its reason for refusal. It therefore forms the starting point for my consideration.

6. Policy CTY4 is entitled the 'Conversion and reuse of existing buildings'. It states that planning permission will be granted to proposals for the sympathetic conversion, with adaption if necessary, of a suitable building for a variety of uses, including as a single dwelling, where this would secure its upkeep and retention. Paragraph 6.73 of the SPPS however in stating that this provision applies to a locally important building *(my emphasis)* rather than 'a suitable building' effectively offers a revision to Policy CTY4. The matter of potential conflict arising between the SPPS and retained existing policies and the weighting direction set out in paragraph 1.12 of the SPPS indicates that 'locally important building' must take precedence. The SPPS does not define 'locally important' but lists examples such as former school houses, churches and older traditional barns and outbuildings. I consider that these cited examples typically relate to buildings that generally have some design, architectural or historic merit. Nonetheless, this is not a definitive list and there may be other factors that would result in a particular building being of importance to a locality. The appellant however has advanced no argument or detail as to why the appeal structure is 'locally important'. It is set back approximately 760m from the Point Road with limited public views of it. I conclude that the structure is not a locally important building and its conversion to a dwelling is not supported by the SPPS in the first instance. The indicative concept plan shows that the proposed extension would represent a 140% increase in the footprint of the existing structure with additional proposed floor space at first floor level. This would not be sympathetic to the scale and massing of the existing structure contrary to a requirement of Policy CTY4 of PPS21. The planning authority has sustained its first reason for refusal.

7. Whilst the appellant stated that the proposal was not a replacement, he sought consideration of the proposal under an element of Policy CTY3 of PPS21. Though entitled 'Replacement Dwellings', Policy CTY3 states that the retention and sympathetic refurbishment of non-listed vernacular dwellings in the countryside will be encouraged in preference to their replacement. Policy CTY3 however must be read as a whole and the tests for the condition of the building that apply for a replacement proposal would also apply to a non-listed vernacular dwelling to be retained under this policy. Though Annex 2 of PPS21 sets out what constitutes a vernacular dwelling, it does not provide any parameters regarding the state of repair of the building. Those parameters are set out under Policy CTY3 which

requires that the building exhibits the essential characteristics of a dwelling and as a minimum all external structural walls are substantially intact. Notwithstanding that the appeal structure may exhibit the vestiges of the essential characteristics of a dwelling, only one external gable wall is substantially complete with approximately 70% remaining of the only other evident wall. The appeal structure therefore fails to meet the first test under Policy CTY3.

8. The appellant sought to make a comparison between the appeal proposal and an approval granted in 2009 (C/2008/0639) for the 'Retention of existing vernacular dwelling and incorporation into new development scheme for a private dwelling'. From the photographic evidence provided by the planning authority, the subject building in that case was a completely intact dwelling which contrasts significantly with the appeal structure which requires an extensive amount of reconstruction work to reinstate its original form and use. Furthermore that proposal was considered under Policy BH15 of PPS6: Planning, Archaeology and Built Heritage. I find that that grant of approval is distinguishable and does not assist the appellant's case which is considered under the prevailing policy context of the SPPS and PPS21.

9. No evidence has been presented to suggest that the proposal complies with any of the other specified types of development considered to be acceptable in principle in the countryside under Policy CTY1. The prevailing policy for development in AONBs is to be found in Planning Policy Statement 2: Natural Heritage and does not override the requirement for the proposal to be acceptable in principle in the countryside in the first instance. Policy CTY1 goes on to state that other types of development will be permitted where there are overriding reasons why that development is essential and could not be located in a settlement. Though this provision is not referred to in the SPPS, paragraph 1.12 of that policy document states that where the SPPS is silent or less prescriptive on a particular planning policy matter this should not be judged to lessen the weight to be afforded to the retained policy. There is no evidence to demonstrate that the proposal is essential. The proposal is therefore contrary to Policy CTY1 and consequently to the SPPS. The planning authority has sustained its second reason for refusal.

This decision is based on the following drawings:-

- 01 1:2500 scale Site location plan;
- 02 1:100 scale concept plan.

**COMMISSIONER BRIGID McGLINCHEY**

**List of Documents**

| | | |
|---|---|---|
| Planning Authority:- | C1 | Statement of case + Appendix |
| | C2 | Rebuttal + Appendices |
| Appellant:- | A1 | Statement of case + Appendices |
| | A2 | Rebuttal |

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# Appeal Decision



| | |
|---|---|
| **Appeal Reference:** | 2016/A0198 |
| **Appeal by:** | Mr Ronald McCullough |
| **Appeal against:** | The refusal of full planning permission |
| **Proposed Development:** | Retention and completion of second floor balcony to rear of existing terraced house |
| **Location:** | 87 Causeway Street, Portrush |
| **Planning Authority:** | Causeway Coast and Glens Borough Council |
| **Application Reference:** | LA01/2016/0827/F |
| **Procedure:** | Written representations and accompanied site visit on 12 May 2017 |
| **Decision by:** | Commissioner Rosemary Daly, 25 May 2017 |

**Decision**

1. The appeal is dismissed.

**Reasons**

2. The main issues in this appeal relate to the impact of the balcony on the appearance of the existing property and surrounding area; and its impact on the amenity of the surrounding residents by reason of overlooking.

3. Section 45 (1) of the Planning Act (Northern Ireland) 2011 requires that regard must be had to the local development plan, so far as material to the application. Section 6(4) of the Act states that a determination under the Act must be made in accordance with the plan, unless material considerations indicate otherwise.

4. The appeal site is within the development limits of Portrush as defined in the Northern Area Plan 2016 (NAP). The appeal site is also located within an Area of Archaeological Potential and is in proximity to a noted archaeological site and monument. No objections to the proposal were raised in respect of any impacts on archaeological potential in the area. The NAP does not contain specific policy relating to residential extensions and alterations.

5. The Strategic Planning Policy Statement for Northern Ireland 2015 (SPPS) is a material consideration. The SPPS promotes good design, protection of amenity and positive place making. Other relevant policy is also contained in the Addendum to Planning Policy Statement 7 Residential Extensions and Alterations (the Addendum). Policy EXT 1 of the Addendum states that planning permission will be granted for a proposal to extend or alter a residential property where four criteria are met. The Council and third party concerns related to criterion (a) in respect of the appearance of the development on the existing property; and criterion (b) relating to the impact of the proposal on the privacy and amenity of the neighbouring residents. The head note of

Policy EXT1 also states that guidance set out in Annex A should be taken into account when assessing proposals against the criteria.

6. The appeal property is a narrow three storey mid terrace dwelling fronting onto Causeway Street. Its rear elevation takes advantage of the sea views towards the East Strand. The proposal relates to the retention and completion of a second floor balcony onto the rear elevation of the property. The galvanised steel frame of the balcony projects out from a bedroom doorway on the second floor. The proposed glass panels and floor are not in place on the balcony. Views of the rear elevation of the appeal property, in its context, are possible from the shared right of way to the rear of the terrace and further away from the East Strand Carpark. By comparison to the surrounding properties the appeal property appears to have recently been modernised. From both viewpoints the balcony is set within the context of an eclectic mix of rear returns and elevations including a variety of design, finishes, scale and heights. The use of balcony and rear return terraces are common feature in this area including the properties at 47 & 77 Causeway Street and will be on the sea facing side of the Vue Apartments that are currently under construction.

7. The appearance of the galvanised steel balcony when completed with the glass panels would appear modern and would be in keeping with the appearance of the appeal property. The proposal will not significantly detract from the appearance of the existing property or would it detract from the overall appearance and eclectic character of the surrounding area. Accordingly the proposal meets criterion (a) of Policy EXT1 of the addendum. The Council's first reason for refusal and third party objections relating to the impacts of the development on the building and character are not sustained.

8. The balcony is position on the second floor of the property. In accordance with the submitted scale drawings it projects some 1.2 metres from the wall of the rear return of the property and is some 2.6 metres wide. The total floor space of the balcony is around 3.12 sq metres. Given the built up nature of the terrace along Causeway Road combined with the juxtaposition between the appeal property and its neighbouring properties means there is already a common degree of overlooking in the area.

9. The height, orientation and position of rear return relating to the property at 89 Causeway Road limits overlooking views from the balcony onto the private amenity space of this property. The separation distance between the appeal property and the property at 85c combined with other intervening development means that over looking from balcony would also be at an acceptable level. The property at 85a Causeway Street sits within the back yard area of the 85 Causeway Street. It adjoins 85b and both properties are single storey. From the balcony views are looking down and over these properties. The majority of the amenity space cannot be seen due to the direction and orientation when looking outwards from the balcony. Accordingly I do not consider the balcony would significantly increase the level of overlooking on the surrounding properties at 89, 85a, 85b and 85c Causeway Street.

10. The appeal property adjoins the property at 85 Causeway Street. Form the bedroom door of the appeal property the outlook would not significantly be greater than from any of the existing rear windows in the area. I do not find the overlooking from the doorway to be unacceptable.

11. The design of the balcony projection means that closer and more direct views are available onto the private amenity space and north towards window openings of the property at 85 Causeway Street. From the balcony views looking down on the

neighbouring perspex roof would be possible. This perspex roof relates to a downstairs toilet. The outlook from the balcony in respect of the property at 85 Causeway Street would be significantly greater from the balcony than from the bedroom doorway. Even though the balcony leads from a bedroom and its use may be limited to summer days the balcony will create additional amenity space for the property to enjoy views of the East Strand. There is no means to control when and how often such private amenity space would be used. I have therefore not been persuaded that the balcony would not be used for the majority of the year. At the appeal site visit the appellant advised that the design of the balcony could be amended to introduce obscure glass and extra screens to each side. However without the submission of such information and details I have not been convinced that these measures would significantly reduce the level of overlooking onto 85 Causeway Street given the height, position and design of the balcony. The proposed balcony would result in an increased level of overlooking that that would unduly affect the privacy and residential amenity of the neighbouring residents at 85 Causeway Street.

12. The appellant referred to other examples of balconies in the immediate vicinity. The appellant stated these examples have a similar level of overlooking and therefore set a precedent for the appeal proposal. The balcony at 77 Causeway Street is part of a flat roof rear return. The balcony is located on the first floor and is hemmed to both sides by existing boundary walls. Outlook from this property is only in one direction and does not overlook the neighbouring properties to the same extent as the balcony on the appeal property. The property at 47 Causeway Street is not within the same residential context of the appeal site. The balcony at 97 Causeway Street is part of a rear box extension and is set in a different context along the Causeway Street. A different balcony scheme has been approved (C/2013/9123/F) and constructed on the site to that shown in the appellant's statement of case. This balcony as constructed is on the first floor on the rear elevation of the property. Views from both the north and south side of the balcony are restricted with the use of solid walls and glass screens. This balcony does not permit the same level of overlooking onto the adjacent properties as the appeal proposal in respect of 85 Causeway Street. The Vue Apartments under construction to the rear of Causeway Street have sea view balconies and do not significantly overlook the surrounding properties.

13. All in all the other examples of balconies in the area do not share the same design, orientation and position in respect of their relationship with their neighbouring properties as the appeal site. Accordingly they do not set a precedent for appeal proposal that override the concerns relating to an unacceptable level of overlooking. As the balcony proposal gives rise to an unacceptable level of overlooking it fails to meet criterion (b) of Policy EXT 1 of the addendum. This issue is determining in this case and accordingly the Council's second reason for refusal is sustained.

This decision is based on the following drawings:-

- Drawing 01 Site Location Map Scale 1:2500 dated Planning Office received 05 July 2016
- Drawing 02 Site Plan Scale 1:500 dated Planning Office received 05 July 2016
- Drawing 03 Sketch Proposals Scale 1:50 dated Planning Office received 05 July 2016

**COMMISSIONER ROSEMARY DALY**

**List of Appearances**

| | |
|---|---|
| Planning Authority:- | Stephen O Neill, Causeway Coast and Glens Borough Council |
| Appellant:- | Mr Jeff Wilson, Architects<br>Mrs Lucy Mc Cullough |
| Third Party:- | Mr Kenneth Fallis |

**List of Documents**

| | | |
|---|---|---|
| Planning Authority:- | "A" | Statement of Case, Causeway Coast and Glens Borough Council |
| | "A1" | Comments and appendices |
| Appellant:- | "B" | Statement of Case, Appellant |
| | "B1" | Comments |
| Third Party:- | "C" | Statement of Case Kenneth Fallis |

Planning Appeals Commission



# Appeal Decision

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|---|---|
| **Appeal Reference:** | 2016/A0190. |
| **Appeal by:** | Mr Desmond Boyle. |
| **Appeal against:** | The refusal of full planning permission. |
| **Proposed Development:** | Relocation of access and garage on approved site D/2010/0144/RM. |
| **Location:** | Approx. 100m south east of 11 Magheraboy Road, Rasharkin. |
| **Planning Authority:** | Causeway Coast and Glens Borough Council. |
| **Application Reference:** | LA01/2015/0910/F |
| **Procedure:** | Written representations and Commissioner's site visit on 17 May 2017. |
| **Decision by:** | Commissioner Mark Watson, dated 25 May 2017. |

## Decision

1. The appeal is dismissed.

## Reasons

2. The main issue in this appeal is the principle of development.

3. The Northern Area Plan 2016 (NAP) operates as the statutory local development plan for the proposal. In it, the site lies within the countryside. The NAP offers no specific policy or guidance in respect of the appeal development and is not material. There is no conflict or change in policy direction between the provisions of the Strategic Planning Policy Statement for Northern Ireland and those of Planning Policy Statement 21 – Sustainable Development in the Countryside (PPS21) in respect of the appeal development, thus the policy provisions of PPS21 remain applicable.

4. The site comprises a portion of an agricultural field set back from the southern side of Magheraboy Road. It is presently accessed from an existing laneway that serves No. 11 Magheraboy Road and an associated farm supply business located to the rear and south of that dwelling. The rectangular site is defined on the eastern and southern sides by mature hedge, whilst the northern boundary is defined by an earth bank and semi-mature vegetation. The western boundary is undefined. At the time of my site visit the site had been largely cleared of topsoil, with a concrete foundation strip laid within the northern section.

5. Outline planning permission for a dwelling and garage on the site was granted on appeal (ref. 2006/A0721) on 1 October 2007 under the policy context of the Planning Strategy for Rural Northern Ireland. The reserved matters application

(ref. D/2010/0144/RM) was subsequently approved on 4 August 2010. The appeal development seeks alterations to this previously approved dwelling, the current proposal being predicated on there being a live planning permission on the site. Contention between the parties existed as to whether the approved development had commenced on site before the expiration of the reserved matters application on 4 August 2012. The Council considered that the permission had not been implemented and had lapsed, which given the change in rural planning policy since the advent of PPS21, resulted in there being no policy justification for a dwelling on the site under PPS21, or for the alterations sought to the approved dwelling. The Appellant considered that development had been commenced within the correct timeframe through the laying of part of the foundation for the dwelling and the creation of a visibility splay at the access point onto Magheraboy Road.

6. During my site visit the works carried out to provide the splay and the provision of part of the foundations for the dwelling were evident. The Appellant also provided site photographs and receipts pertaining to the works carried out in order to demonstrate that the permission had been implemented within time. However, this appeal is not the appropriate means by which to determine whether development had commenced on site within the timeframe of the reserved matters permission. The correct mechanism for assessing these matters would be through the submission of an application for a Certificate of Lawfulness of Existing Use or Development (CLEUD).

7. Whilst the Appellant may have experienced a series of unfortunate events pertaining to the processing of the application, including changes in agent, these matters would not justify approval of the application in the absence of a CLEUD certifying that development had commenced on site within the timeframe of the planning permission. The aim of providing additional privacy for the existing dwelling and business at No. 11 Magheraboy Road would not justify approval of the development within the context of this particular appeal.

8. In the absence of a determination on whether or not there remains a live planning permission on the site, there is no support in policy for the appeal proposal. For this reason the Council's objection to the appeal development is sustained and determining. The appeal must fail.

This decision is based on the drawing entitled 'Details' dated October 2015, comprising a 1:2500 scale Location Map, 1:500 scale Block Plan and 1:100 scale Garage Elevations & Floor Plan, submitted with the application.

**COMMISSIONER MARK WATSON**

**List of Documents**

| | |
|---|---|
| Planning Authority:- | 'A' Statement of Case & Appendices (Causeway Coast & Glens BC) |
| Appellant:- | 'B' Statement of Case (Mr D Boyle)<br>'C' Rebuttal Statement & Appendix (Mr D Boyle) |

Planning Appeals Commission



# Appeal Decision

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|---|---|
| **Appeal Reference:** | 2016/A0165 |
| **Appeal by:** | Martin Rankin |
| **Appeal against:** | The refusal of full planning permission |
| **Proposed Development:** | Provision of additional living accommodation within existing domestic garage |
| **Location:** | 21 Drumnaheigh Road, Armoy, Ballycastle |
| **Planning Authority:** | Causeway Coast and Glens Borough Council |
| **Application Reference:** | LA01/2016/0602/F |
| **Procedure:** | Written representations and Commissioner's site visit on 5th May 2017 |
| **Decision by:** | Commissioner Andy Speirs, dated 8th May 2017 |

## Decision

1. The appeal is allowed and full planning permission is granted unconditionally.

## Reasons

2. The main issue in this appeal is whether the proposal would result in the creation of an additional dwelling unit on the appeal site.

3. The proposal involves internal conversion of the existing garage at No.21 Drumnaheigh Road to provide a living area and a small bedroom on the ground floor and a bedroom with ensuite bathroom at first floor level. The plans do not indicate any changes to the external appearance of the garage, although I observed that black UPVC foul sewerage piping has been installed at both gables of the building. I take the view that the piping has not materially altered the external appearance of the building.

4. It is generally accepted that the use of a domestic garage for living accommodation ancillary to the main dwelling does not represent a material change of use or require planning permission. It merely involves the building changing from an incidental to an ancillary residential use. This does not constitute development. Neither do physical operations to convert an existing garage to additional ancillary living space, if they do not materially affect the external appearance of the building. In the circumstances of this case, I judge that the aforementioned circumstances apply and that planning permission was not actually required for the conversion. However, I must deal with the proposal as submitted.

5. Section 45 (1) of the Planning Act (Northern Ireland) 2011 requires regard to be had to the Development Plan, so far as material to the application and to any other material considerations. Section 6(4) states that where regard is to be had to the Development Plan, the determination must be made in accordance with the Plan unless material considerations indicate otherwise. The appeal site is located in the countryside as defined in the Northern Area Plan 2016 (NAP). The plan contains no designation or zoning affecting the appeal site. It is also silent in respect of proposals of the subject nature.

6. Other planning policy context for the proposal is provided by the Strategic Planning Policy Statement for Northern Ireland (SPPS) introduced in September 2015. The SPPS makes it clear that the provisions of, inter alia, the Addendum to Planning Policy Statement 7 - Residential Extensions and Alterations (the Addendum), will continue to apply until such time as a new development plan is in place for the Causeway Coast and Glens Council area.

7. The Council has relied upon policy EXT1 of the Addendum in its reason for refusal. The policy is entitled 'Residential Extensions and Alterations' and states that "Planning permission will be granted for a proposal to extend or alter a residential property where all of the following criteria are met: (a) the scale, massing, design and external materials of the proposal are sympathetic with the built form and appearance of the existing property and will not detract from the appearance and character of the surrounding area; (b) the proposal does not unduly affect the privacy or amenity of neighbouring residents; (c) the proposal will not cause the unacceptable loss of, or damage to, trees or other landscape features which contribute significantly to local environmental quality; and (d) sufficient space remains within the curtilage of the property for recreational and domestic purposes including the parking and manoeuvring of vehicles. The guidance set out in Annex A will be taken into account when assessing proposals against the above criteria".

8. Paragraphs 2.8 to 2.11 of the explanatory text of the Addendum relate to ancillary accommodation. Paragraph 2.9 states that "to be ancillary, accommodation must be subordinate to the main dwelling and its function supplementary to the use of the existing residence. Such additional accommodation should normally be attached to the existing property and be internally accessible from it, although a separate doorway access will also be acceptable". Paragraph 2.10 deals with situations where an extension to the existing house is not practicable and it is proposed to convert and extend an existing outbuilding. It explains that planning permission will normally depend on the development providing a modest scale of accommodation in order to ensure the use of the building as part of the main dwelling. It goes on to say that the construction of a separate building, as self contained accommodation, within the curtilage of an existing dwelling house will not be acceptable, unless a separate dwelling would be granted permission in its own right. Paragraph 2.11 indicates that in all cases, the planning authority will need to be satisfied that the proposed accommodation will remain ancillary to the main residential property; where permission is granted it will be subject to a condition that the extension will only be used for ancillary residential purposes in connection with the main dwelling, and not as a separate unit of accommodation.

9. The Council has submitted that paragraph A49 of Annex 'A' to the Addendum is also applicable. This is entitled 'Extensions and Alterations to provide for Ancillary Uses'. It states that an alteration to a residential property to provide an ancillary use, such as additional living accommodation, should be designed to demonstrate dependency on the existing residential property. It goes on to indicate that "ancillary uses that could practically and viably operate on their own will not be acceptable".

10. The appellant has outlined the reasons why additional living space is required at this address and there is no evidence to suggest that a separate dwelling has been created in the subject garage; it shares electricity and water supply with the main dwelling and utilises the same driveway and septic tank. It is also sited within a few metres of the main dwelling. With a total internal floorspace of around 65m², and no separate dedicated curtilage, I consider it very unlikely that the building could operate as a viable self-contained dwelling unit. The proposal does not conflict with the headnote of policy EXT1. It does not involve the construction of a new building and I do not consider that it offends against the content of paragraph 2.10 of the Addendum. It relies on the access and services of the main dwelling at No.21 and does not therefore conflict with paragraph A49. I conclude that the Council's refusal reason is not sustained and the appeal must therefore succeed.

11. The Council suggested two conditions in the event of consent being granted. The first of these relates to the effective date of the approval. Since the development has already taken place, such a condition is unnecessary. The second suggested condition related to the use of the building for ancillary residential accommodation only. Should the building become a separate and self-contained dwelling unit, this would require planning consent and is a matter that could be addressed by the planning authority. In the circumstances the second condition is also unnecessary.

This decision is based on drawing 01, at scales, 1:2500, 1:500, 1:100 and 1:50, stamped received by the Council on 20th May 2016.

**COMMISSIONER ANDY SPEIRS**

**List of Documents**

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| Planning Authority:- | Doc "A" - statement of case with appendices<br>Doc "B" - rebuttal comments |
| Appellant:- | Doc "C" - statement of case<br>Doc "D" - rebuttal comments |