

Addendum

LA01/2023/0482/F

1.0 Update

- 1.1 The Planning Department refers to PAC decision Reference 2012/A0073 Flo Road, Kildress. In this appeal the PAC discuss the requirement “to be run in conjunction with the agricultural operations of the farm” as required in Policy CTY11 of PPS21. The PAC concluded that the term suggests that there should be some sort of joint management of the business or some form of business connection. The PAC concluded that in that case it had not been demonstrated that the appeal proposal is to be run in conjunction with the agricultural operations on the farm and was therefore not a valid farm diversification proposal.

2.0 Recommendation

- 2.1 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.

Appeal Decision

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Appeal Reference: 2012/A0073
Appeal by: Mr Noel Conway against the refusal of full planning permission.
Development: Retention of part farm diversification from ex. farm building to shop, fuel sales and storage with associated concrete yard.
Location: Opposite 2-4 Flo Road, Kildress.
Department's Reference: I/2012/0019/F
Procedure: Informal hearing on 12th December 2012.
Decision by: Commissioner Mandy Jones, dated 12th February 2013.

Decision

1. The appeal is dismissed and full planning permission is refused.

Preliminary Matter

2. The appellant's Block Plan; scale 1: 500 site, submitted with the Statement of Case, shows an extended area than that shown within the red line of the original Site Location Plan scale 1:2500 submitted as part of the original planning application. This allows the access splays required and 4 car parking spaces along the south east boundary of the site. The objector argues that this change in the red line boundary renders the appeal invalid. I note that the amendments to the red line are within the appellant's ownership boundary as indicated within the blue line. All of the parties had an opportunity to view and assess the revised boundary prior to and at the hearing. I consider this change to the red line to be a minor amendment and I am satisfied that no one would be prejudiced by considering the amended site boundary in this appeal. The amended site boundary as submitted in the appellants Block Plan 1:500 with the Statement of Case therefore form the basis of my considerations and I will proceed to consider the appeal.

Reasoning

3. The main issues in this appeal are:
 - whether the development is acceptable in principle in the countryside;
 - the effect of the development on visual amenity and rural character; and
 - its effect on the safety and convenience of road users.

4. Planning Policy Statement 21: Sustainable Development in the Countryside, (PPS 21), Policy CTY 1 sets out a range of development which in principle are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development and 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 settlement. The range of acceptable development includes farm diversification proposals in accordance with Policy CTY 11. Policy CTY 1 goes on to say that there are a range of other types of non-residential development that may be acceptable in principle in the countryside and that proposals for such development will be considered in accordance with existing published planning policies.
5. Policy CTY 11 states that planning permission will be granted for a farm diversification proposal where it has been demonstrated that it is to be run in conjunction with the agricultural operations on the farm. Four criteria are listed under Policy CTY 11. The Department does not dispute that the development is run in conjunction with the operations on the farm and fulfils criteria (a), (c) and (d) but argues that it does not meet criteria (b). Objectors however dispute that the development is run in conjunction with agricultural operations on the farm and dispute criteria (b), (c) and (d).
6. The business comprises of the sale of fuels from a diesel pump at site, oil fuel deliveries from 2 tanker lorries, local farm produce, convenience items and bagged fuel sales. The gable of the larger agricultural building sits at the road edge with an informal concrete yard to the roadside.
7. The appellant claims that the development will be run in conjunction with the agricultural operations on the farm, and presented the following:
 - Mr Conway is an active and long established farmer for six plus years with a DARD ID business number 626430;
 - He currently owns 18.33 hectares of farm ground which he grows grass for grazing and fodder crops such as hay and silage for re sale;
 - The appellant leases the existing agricultural building, farm shop and associated yard to a local couple Mrs Nicola Heron and Mr Karl Paul. They manage the shop and pay rent to the appellant and this does not interfere with the farming operations associated with Mr Conway's business; and
 - The appellant uses the remainder of the farm sheds associated with his farm business adjacent and opposite 4 Flo Road for machinery storage, crop feed and a few horses.
8. In terms of the Policy headnote which requires development 'to be run in conjunction with the agricultural operations on the farm' the Department stated that a precedent had been set by a recent PAC decision 2009/E029. Objectors disputed this and stated while the appellant is a farmer the only relationship he

has with the development is income based and the farm and the fuel shop are 2 separate and discreet functions.

9. In appeal 2009/E029, the facts of the case were that the farmer started engineering work to equipment on his own farm and those of his neighbours and was assisted by two friends who lived locally. At the time of the appeal the appellant worked at farming, including fruit and vegetables on his own farm. The appellant's two friends continued the engineering business, using the name Pro-Fab, and had two employees. Pro-Fab paid a weekly rent. Evidence was that the range of work and the clientele now carried out has not changed since the business was started by the appellant. The appellant stated that if Pro-Fab ceased work, he would continue the engineering business retaining his original customers.
10. That appeal decision was decided on the specific facts of the case. The appellant had more involvement in the engineering business than just deriving a rental income from it. In that case, the appellant had started the business and indicated that he would be involved in the future. I do not accept that the facts of that appeal are comparable with those of the present appeal.
11. Unlike appeal 2009/E029, the present appellant has no involvement with the business and his evidence was that he only derives rental income from Mrs Nicola Heron and Mr Karl Paul who manage the shop. This appeal can be distinguished and there is no suggestion that the appellant had any role to play in the setting up, the current running of the business or the future of the business.
12. Although policy provides no explanation of the requirement, 'to be run in conjunction with the agricultural operations on the farm,' I agree with the objectors that it suggests that there should be some sort of joint management of the business or some form of business connection. The appellant referred to other uses which have been allowed under Policy CTY 11, such as crèches however no specific cases were identified. I conclude that it has not been demonstrated that the appeal proposal is to be run in conjunction with the agricultural operations on the farm and is therefore not a valid farm diversification proposal.
13. The Department and the objectors disputed that the appeal development did not comply with criteria (b) which requires the development in terms of character and scale to be appropriate to its location.
14. Critical views were identified from the Drum Road and the Flo Road. Although the shop is part of an existing agricultural building, I agree with the Department that the insertion of the glazed shop front, concrete forecourt and extensive signage has resulted in a building with an overtly urban form. Although the appellant has stated that the appeal does not include signage or hoarding and this is subject to an upcoming appeal, I consider that there is an inevitability for such a business to advertise on a prominent roadside location if approved. Not all business related signage requires express consent under the Advertisements Regulations.

Therefore signage is a material consideration and cannot be simply disregarded. Photographs submitted by the objector show a modest integrated agricultural building prior to the insertions. I consider that the development is not in character with its rural context and therefore does not comply with criterion (b)

15. Objectors stated that the development does not comply with criterion (c) in that it will have an adverse impact on the natural or built heritage and criterion (d) it will result in detrimental impact on amenity of nearby residential dwellings including potential problems arising from noise, smell and pollution. No evidence was presented in relation to these concerns by the objectors and I find them not to be sustained. However, for the reasons set out above, I am satisfied that the development does not comply with Policy CTY 11.
16. The policy provisions in PPS 21 take precedence over most of the provisions of PSRNI. However, Policy IC 15 has not been superseded by PPS 21 is still applicable in the countryside. This refers to Roadside Service Facilities in which the headnote states, 'The provision of roadside service facilities on the trunk roads network in the open countryside may be considered acceptable where there is a clear indication of need.' It is clear therefore that roadside service facilities is a form of development that may be acceptable in principle in the countryside in certain circumstances. Policy IC 15 is not restricted to petrol filling stations as argued by the appellant.
17. However, the appeal development is not located on a trunk road within the countryside but on a minor road and no indication of need has been presented by the appellant to establish the necessity of the development in the locality. I note that there is an existing roadside service facility a few hundred metres from the appeal development. Therefore, I conclude that this development is not supported by Policy IC 15.
18. Planning Policy Statement 5 (PPS 5) Retailing and Town Centres, para 54 refers to rural shops and states, 'Retailing will generally be directed to existing settlements of appropriate size and the development of inappropriate retail facilities in the open countryside will be resisted. However, those retail facilities which may be considered appropriate outside the development limit of settlements include; farm shops, clearly tied to an existing farm holding or occupant'.
19. The appellant states that the retail facility is tied to the appellants farm holding and complies with para 54, and is a farm shop selling local farm products, small scale convenience goods, home heating oil, agricultural and road diesel serving the local and wider rural and farming hinterland. Letters from 4 local farmers who provide produce for resale at the appeal development was provided, including logs and bags of sticks - bagged and provided by a local farmer, a vegetable stand selling locally grown potatoes and vegetables from a nearby farm, logs from local trees grown locally and convenience items for sale.

20. Para 54 states that farm shops should be 'clearly tied' to an existing farm holding, and I agree with the Department and objectors that there should be a link from the goods sold in a farm shop to the farm and a farm shop should sell produce generated by the farm. Although there are some local goods sold in the shop they are not from the appellant's farm holding and the appeal development is clearly a much larger scale operation supplying and distributing home heating oil, selling agricultural and road diesel from pumps and the sale of convenience items as well as some local produce. This is not what is envisaged as a farm shop in policy and I agree with the Department and objectors that the appeal development is not supported by Policy PPS 5.
21. Policy CTY 1 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 settlement. There was no persuasive evidence to demonstrate that the development is essential. I therefore conclude that the development is unacceptable in principle in the countryside and contrary to CTY 1 and CTY 11 of PPS 21. The 1st and 3rd reasons for refusal are sustained.
22. Objectors state that the development is contrary to Policy CTY 13 as the site does not have long established boundaries and it occupies a prominent position in this rural landscape. I have already concluded that the development is a prominent feature in the landscape and I also agree with the objectors that it lacks natural boundaries to provide a suitable degree of enclosure and integration as required within this rural context as required by policy.
23. It is for these reasons also that I consider the development to be unduly prominent in the landscape and that it would therefore cause a detrimental change to and further erode the rural character of the area. The development is contrary to policy CTY 14 - notwithstanding the appellants offer to confine all retail activity and storage to the building (apart from the diesel pumps) Accordingly, the Departments 4th reason for refusal and the objectors concerns are sustained.
24. Drawings submitted with the appellant's statement of case indicate visibility splays of 2.4m x 45m south west and 2.4m x 80 m north east as requested by Roads Service in their consultation response dated 21.2.2012. If the appeal were approved the provision of these splays could be secured by condition. I conclude that this issue is capable of being resolved and accordingly the Departments 5th reason for refusal is not sustained.
25. Planning Policy Statement 3 (PPS 3) - Access Movement and Parking, Policy AMP 7: car parking and servicing arrangements states that development proposals will be required to provide adequate provision for car parking and appropriate servicing arrangements. Roads Service require 14 car parking spaces, 1 space per pump plus 1 waiting space per pump and turning provision for a petrol tanker (at the hearing they confirmed that a 25m turning circle which is the provision for a large tanker is required). These figures were based on the requirements for a filling station.

26. The appellant submitted drawings indicating a 6.0m wide access, and a minimum 10m access radii, one parking space per pump plus one waiting space per pump position, 9 car parking spaces and an adequate turning circle for a petrol tanker (diameter not specified but indicated that would not be a large tanker making deliveries). Roads Service stated that this still fell short of their requirements. The appellants' site layout plan does not provide the 14 car parking spaces and a 25m turning circle for tanker deliveries and no justification was presented by the appellant for the relaxation of these standards apart from the rural context of the appeal development. In these circumstances, the development is likely to result in vehicle parking on the road impeding the flow of traffic. I conclude that the development is prejudicial to the safety and convenience of road users and the Departments 6th reason for refusal has been sustained.
27. As the development is not acceptable in principle in the countryside, detrimental to visual amenity and rural character and prejudicial to road safety, the appeal must fail.

This Decision relates to the following drawings;

PAC 1: Site Location Plan: scale 1:2500; date stamped refused by the Department - 01.05.2012.

PAC 3: Plans and Elevations: scale 1:100; date stamped refused by the Department - 01.05.2012.

PAC 4: New Block Plan: scale 1:500; submitted with the Appellants Statement of Case.

COMMISSIONER MANDY JONES