

**Derry City and Strabane District Council Planning Committee Report**

**COMMITTEE DATE:** 3rd July 2019

**APPLICATION No:** LA11/2018/0237/O

**DATE OF APPLICATION:** 09.03.2018

**DATE OF RECEIPT:** 09.03.2018

**APPLICATION TYPE:** Outline

**PROPOSAL:** Site for two storey farm dwelling and detached domestic Garage

**LOCATION:** 80 metres North of 5 Tagharina Road, Lower Tully, Newbuildings, Londonderry

**APPLICANT:** Robert Killen

**AGENT:** Adrian Brown

**ADVERTISEMENT:** 03.04.2018

**STATUTORY EXPIRY:** 18.04.2018

**RECOMMENDATION:** Refuse

**REASON FOR PRESENTATION TO COMMITTEE:** Reconsideration following members not accepting the officer recommendation to refuse at committee on 6<sup>th</sup> March 2019. This report should be read in conjunction with the report presented on 6<sup>th</sup> March 2019 in Appendix 1A.

All planning application forms, drawings, letters etc. relating to this planning application are available to view on [www.planningni.gov.uk](http://www.planningni.gov.uk)

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**1. Reconsideration**

**1.1** The application was recommended for refusal on 6<sup>th</sup> March 2019 as it was considered at that time the proposal was contrary to policy CTY 10 (a) of PPS 21, as it had not been demonstrated that the farm business was currently active and had been established for at least six years. This was based on information provided in the DAERA consultation response, advising the farm business had not claimed single farm payment since 2014.

1.2 Members voted not to accept the officer recommendation. Members disagreed with the interpretation of CTY 10 (a) by officers.

1.3 In reconsidering the case the agent and applicant and operator of the DARD Business ID met with the Principal Planning Officer on 18<sup>th</sup> April 2019. Additional information was submitted to demonstrate agricultural activity for 2016 and 2017. However no information was provided for 2015 as Mr Christopher Killen was going through difficult personal circumstances. This was substantiated through supporting information from the agent and the accountant, submitting copy of tax return submitted in 2015, stating no income for that year.

1.4 The site proposed is on a farm holding owned by Mr D Killen. The applicant is Mr R Killen, son of Mr D Killen, and the farm business ID supporting this application is in the name of Mr C Killen. Within the holding two farm business IDs are currently operating, 1) Mr C Killen, and 2) Messrs D, J & A Killen. Two dwellings have previously been approved on the holding, as owned by Mr D Killen in 2011.

1.4 In reconsidering the case, officers have looked at all aspects of CTY 10. In relation to criteria (a) whereby the business must be active and established for 6 years, 2015 is the only year whereby no agricultural activity occurred, and this is undisputed by all parties. The additional information in respect of 2016 and 2017 included:

- Receipt for making 52 bales of silage 20/8/17
- Receipt of making straw bales 25/9/17
- Invoice for purchase of slurry pump 31/5/16

It is considered this information would meet the threshold for agricultural activity for 2016 and 2017. Whilst it is clear there was no agricultural activity in Mr C Killen's farm business during 2015, the difficult personal circumstances ongoing are a material consideration as to the reason why no activity took place. CTY 10 states there is a continuing need for new dwellings on farms to accommodate both those engaged in the farm business and other rural dwellers. Mr D Killen has six sons. Therefore, given the extent of the large farm holding, the two farm business IDs, the tax return evidence and the additional information submitted after the previous planning committee, there is no doubt the extent of engagement this family has in agriculture. Whilst the initial consultation response from DAERA noted Mr C Killen's business had not been active for three of the last six years, looking at all the evidence now and the reasoning, it is felt on balance there is sufficient information to demonstrate agricultural activity over the requisite period, except for 2015, whereby these circumstances

presented, should be afforded weight. Therefore, on balance I conclude, in reconsidering the case, the proposal meets CTY 10 (a).

1.5 Criteria CTY 10 (b) of PPS 21 states that no dwelling opportunities out with settlement limits have been sold off from the farm holding within 10 years of the date of the application. Whilst CTY 10 was published in 2010, this part of the policy is back dated to 2008. In reviewing this application as part of the reconsideration process, I note in the original case officer report, information from the agent sought to seek a dwelling, solely on the basis of the existence of a farm business ID. Supporting information advised as there are two farm business IDs operating therefore there could be two dwellings and to only approve one every ten years, would not allow Mr Killen to operate his business effectively.

1.6 In considering this aspect I would firstly note that two dwellings have been approved in 2011/2012 on the farm holding in the ownership of Mr D Killen. CTY 10 (b) seeks consideration that no dwelling have been 'sold off' the farm holding, it does not refer to the farm business ID. Para 5.40 advises 'sold off' will mean any development opportunity disposed of from the family farm holding to any other person including a member of the family. Both the sites previously approved (listed in section 7 of original case officer report presented 6<sup>th</sup> March 2019) were owned by and on Mr D Killen's holding. Recent land registry information advises, both sites have been transferred to family members in the last 10 years. Therefore in reviewing this case, it is clear this case does not meet CTY 10 (b).

1.7 The siting of the dwelling meets CTY 10 (c), the site does visually link with a group of buildings on the farm.

1.8 In summary, on balance it is considered there is sufficient evidence, following the submission of additional information to demonstrate agricultural activity except for 2015. The reasons for this are clear and undisputed, and should be afforded weight in the consideration. However in reviewing the case it has been noted that as two sites on the holding have been recently transferred to family members within the last ten years (2015 and 2017 respectively), then the proposal does not comply with part (b) of CTY 10.

## **2 CONCLUSION**

The proposal is contrary to CTY 10 part (b), of PPS 21 in that two development opportunities have been 'sold off', being transferred to family members in the last 10 years.

**3. Proposed Refusal Reasons**

1. The proposal is contrary to Policies CTY1 and CTY10 of Planning Policy Statement 21, Sustainable Development in the Countryside and the Strategic Planning Policy Statement as it does not merit being considered as two development opportunities have been sold off from the farm holding within 10 years of the date of the application.

**4. Conditions without prejudice**

1. Application for approval of the reserved matters shall be made to the Council within 3 years of the date on which this permission is granted and the development, hereby permitted, shall be begun by whichever is the later of the following dates:-

- i. the expiration of 5 years from the date of this permission; or
- ii. the expiration of 2 years from the date of approval of the last of the reserved matters to be approved.

Reason: As required by Section 62 of the Planning Act (Northern Ireland) 2011.

2. Approval of the details of the siting, design and external appearance of the buildings, the means of access thereto and the landscaping of the site (hereinafter called "the reserved matters"), shall be obtained from the Council, in writing, before any development is commenced.

Reason: This is outline permission only and these matters have been reserved for the subsequent approval of the Council.

3. No development shall take place until a plan indicating floor levels of the proposed dwelling in relation to existing and proposed ground levels has been submitted to and approved by the Council.

Reason: To ensure the dwelling will integrate into the landform.

4. No development shall take place on the site until a landscaping scheme has been submitted to and approved by the Council showing

- details of all proposed soft and hard landscaping;
- details of all existing and proposed site boundary treatments
- all existing vegetation to be permanently retained

The scheme of planting as finally approved shall be carried out during the first planting season after the commencement of development. Trees or shrubs dying, removed or becoming seriously damaged within five years of being planted shall be replaced in the next planting season with others of a similar size and species.

Reason: In the interest of visual amenity and to ensure the maintenance of screening to the site.

5. A scale plan and accurate site survey at 1:500 (minimum) shall be submitted as part of the reserved matters application showing the access to be constructed and other requirements in accordance with the attached form RS1.

Reason: To ensure there is a satisfactory means of access in the interests of road safety and the convenience of road users.

6. Subject to the above conditions, the development shall be carried out in accordance with the stamped approved Drawing No.01 which was received on 9<sup>th</sup> March 2018.

Reason: To ensure the development is carried out in accordance with the approved plans.