

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: 7/3/2012

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

IN THE MATTER OF WILLIAM YOUNG FOR JUDICIAL REVIEW

Young's (William) Application (Leave Stage) [2012] NIQB 15

TREACY J

[1] The applicant in this case is William Young of Greyabbey, County Down and he seeks leave to challenge the decision of the planning division of the Department of Environment for Northern Ireland in respect of the grant of a planning permission whose number is X/2010/0628/F which was granted on 6 July 2011. That application was for a dwellinghouse on farmlands at an adjacent property at Carrowdore Road, Greyabbey. The site is located within the countryside and the proposal was subject to the detailed policy tests set out in PPS21 and related supplementary guidance. The most relevant policy in this case is policy CTY10 entitled 'Dwellings on Farms' which provides amongst other things as follows:-

"Planning permission will be granted for a dwellinghouse on a farm where all of the following criteria can be met:

- (a) The farm business is currently active and has been established for at least 6 years;"

[2] The applicant's case is that there has been no active farm business on the subject site and that it does not meet the criteria stipulated in CTY10. This finds expression in paragraph 5.7 of this order 53 statement and I also refer without quoting to paragraph 7 to 14 of the applicant's grounding affidavit which includes the contention that the planning officer's site visit reports are inconsistent with the actual condition of the subject lands. The applicant contends that there is no active

farm business and that the condition of the land would not satisfy the eligibility criteria.

[3] Turning again to CTY10 under a section entitled 'Justification and Amplification' the following paragraphs appear.

"5.37. In recognition of changing farming practices and to help support rural communities it is considered that there is a continuing need for new dwellings on farms to accommodate both those engaged in the farm business and other rural dwellers.

5.38. New houses on farms will not be acceptable unless the existing farming business is both established and active. The application will, therefore, be required to provide the farm's DRD business ID number along with other evidence to prove active farming over the required period."

I interpose that in the present case such a business number was provided in support of the application for planning permission.

"5.39. For the purposes of this policy "agricultural activity" refers to the production, rearing or growing of agricultural products including harvesting, milking, breeding animals and keeping animals for farming purposes, or maintaining the lands in good agricultural and environmental condition. This is in line with EU and DRD regulations; Article 2 of European Council Regulation (EC) No 73/2009."

[4] The proposed respondent considered the application and granted planning permission on 6 July 2011. The considerations are recorded in the case officer's detailed site report dated 4 May 2011 and on page 3 of that report he sets out the definition of agricultural activity which I have just read from paragraph 5.39 of CTY10 and he then goes on to state:-

"From both the information received from DRD and the initial site inspection it appears that the lands have been maintained to a good agricultural and environmental condition which is in line with all required regulations outlined in Article 2 of the European Council Regulations.

A further consultation was issued on DRD following a letter of objection which suggested that the lands had neither been farmed nor rented since 2002. In

response to this DRD indicated that there is a related business ID number but no single farm payment or any other scheme has been claimed over the last six years. Under CTY10 this sub criteria is, however, not required for planning permission to be granted."

[5] On page 4 the case officer records the objections which were received to the planning application which included the contention that agricultural activity had not occurred on the subject lands for some time. It having been indicated that no crops had been grown on the site, there was no livestock on the lands and that the lands had deteriorated to scrub.

[6] In his consideration of the objections the case officer stated:-

"As outlined above the application is for a farm dwelling and therefore has been assessed against PPS21 and decision making process. In both responses DRD had indicated that there is an associated farm business number which is one of the requirements outlined under CTY10 and that the policy test for an active farm has been met."

And he then goes on to recommend approval. In his recommendation section he says that due to the proposal fulfilling the criteria set out in the above mentioned policy CTY10 and a detailed assessment of all objections he recommended approval.

[7] The objections were further considered by the development management group on 25 May 2011 and they agreed with the recommendation. It appears to have been further considered and approved on 20 June 2011 and in a file note dated 1 July 2011 Jim Coates SPTO stated:-

"Site inspected on 1 July 2011. While the grass on the holding has not been recently cut the field boundaries are intact and have not been subject to any apparent damage or neglect. Also the field gates are in good repair."

Taking these factors into account the opinion of the case officer and of the development management group that agricultural activity is currently being carried out due to the land being maintained in good agricultural and environmental condition is in my view correct and complies with part (a) of policy CTY10 of PPS21."

[8] The unanimous judgment, therefore, of all the officials who dealt with the impugned planning application is that it satisfied the requirements of CTY10 namely that the land had been maintained in good agricultural and environmental condition.

The applicant's objection to the contrary were fully considered and rejected and I see no public law basis for interfering with the assessment of those entrusted with this task. In reality the applicant's judicial review is an impermissible attempt to challenge the merits of the planning judgment of the proposed respondent. Although it did not feature in the applicant's order 53 statement and no application to amend was made the applicant also sought to argue that the assessment that the land was in the relevant condition was outwith the expertise and training of the relevant officials. Aside from the fact that it was never pleaded there is nothing whatsoever to support or justify this assertion. Accordingly the applicant has not made out any arguable case for leave and the application must be dismissed.