

<b>Planning Committee Report</b>  LA01/2018/1369/NMC	<b>23<sup>rd</sup> January 2019</b>
<b>PLANNING COMMITTEE</b>	

<b>Linkage to Council Strategy (2015-19)</b>	
<b>Strategic Theme</b>	Protecting and Enhancing our Environment and Assets
<b>Outcome</b>	Pro-active decision making which protects the natural features, characteristics and integrity of the Borough
<b>Lead Officer</b>	Development Management and Enforcement Manager.
<b>Cost: (If applicable)</b>	N/A

<b><u>No:</u></b>	LA01/2018/1369/NMC	<b><u>Ward:</u></b>	Magilligan
<b><u>App Type:</u></b>	Non Material Change		
<b><u>Address:</u></b>	The Walled Garden, Drenagh Estate, 15 Dowland Road, Limavady.		
<b><u>Proposal:</u></b>	Alteration to existing licensed restaurant facility to incorporate Public House.		
<b><u>Con Area:</u></b>	N/A	<b><u>Valid Date:</u></b>	08/11/2018
<b><u>Listed Building Grade:</u></b>	A		
<b><u>Agent:</u></b>	N/A		
<b><u>Applicant:</u></b>	CL Catering at Drenagh Ltd, estate Office, 15 Dowland Road, Drenagh, Limavady.		
<b><u>Objections:</u></b>	<b>0</b>	<b><u>Petitions of Objection:</u></b>	<b>0</b>
<b><u>Support:</u></b>	<b>0</b>	<b><u>Petitions of Support:</u></b>	<b>0</b>

**Drawings and additional information are available to view on request.**

## **1 RECOMMENDATION**

- 1.1 That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in section 9 and the policies and guidance in sections 7 and 8 and resolves to **REFUSE CONSENT** for a Non-Material Change for the reasons set out in sections 8 and 9.

## **2 SITE LOCATION & DESCRIPTION**

- 2.1 The site is located within the walled garden of the Drenagh Estate and comprises a marquee structure which is used for weddings and events. The site is in proximity to a number of listed buildings of special architectural and historic interest as set out in Section 80 and are protected under the Planning Act (NI) 2011
- 2.2 The site is within the rural area outside of any settlement limit as defined in the Northern Area Plan 2016. The site is located within Drenagh Estate just north east of Limavady Town. The application site is within a designated SLNCI- LNC 05 Fruitfield delta, and is also within a designated Historic Park, Garden and Demesne- LHP 02 Drenagh/ Fruit Hill.

## **3 RELEVANT HISTORY**

LA01/2018/0174/F– The Walled Garden, Drenagh Estate, 15 Dowland Road, Drenagh. Alteration to existing Licensed Restaurant Facility to incorporate Public House. Permission granted 14/06/18.

LA01/2015/0491/F- The Walled Garden, Drenagh Estate, 15 Dowland Road, Limavady. Retention of existing marquee (for 10 yrs) contained within existing walled garden previously approved under B/2009/0303/F. Permission granted 07/12/15.

LA01/2015/0490/LBC- The Walled Garden, Drenagh Estate, 15 Dowland Road, Limavady. Retention of existing marquee (for 10 yrs)

contained within existing walled garden previously approved under B/2009/0303/F. Consent granted 03/12/15.

B/2009/0312/LB- Drenagh Estate, Limavady, Co Derry. Erection of a temporary marquee and creation of a new access and associated works. Consent Granted 29/01/10.

B/2009/0303/F- Drenagh Estate. Erection of a temporary marquee and creation of a new access and associated works. Permission Granted 29/01/10.

## **4 THE APPLICATION**

- 4.1 The proposal is for a Non-Material Change to planning permission LA01/2018/0174/F. Permission was granted for an alteration to the existing licensed restaurant facility to incorporate a public house.
- 4.2 Consent is now sought for a Non-Material Change to the application, which proposes to add the word 'conference' to the description.

## **5 PUBLICITY & CONSULTATIONS**

### **5.1 External**

N/A

### **Internal**

N/A

## **6 MATERIAL CONSIDERATIONS**

- 6.1 Section 45(1) of the Planning Act (Northern Ireland) 2011 requires that all applications must have regard to the local plan, so far as material to the application, and all other material considerations. Section 6(4) states that in making any determination where regard is to be had to the local development plan, the determination must be made in accordance with the plan unless material considerations indicate otherwise.

- 6.2 The development plan is:
- The Northern Area Plan 2016 (NAP)
- 6.3 Due weight should be given to the relevant policies in the development plan.
- 6.4 All material considerations and any policy conflicts are identified in the “Considerations and Assessment” section of the report.

## **7 RELEVANT POLICIES & GUIDANCE**

The Northern Area Plan 2016

Development Management Practice Note 25: Non-Material Changes

## **8 CONSIDERATIONS & ASSESSMENT**

- 8.1 The main consideration in the determination of this application relate to whether or not the proposed change is material in the context of the original approval.
- 8.2 Within The Planning Act (Northern Ireland) 2011, Section 67 confers on a council the power to make a change to any planning application if it is satisfied that the proposed change is not material. Section 67(2) states that when deciding whether a change is material, the council must have regard to the effect of the change, together with any previous changes which may have been made to the original planning application.
- 8.3 Development Management Practice Note 25 – Non Material Change advises that there is no statutory definition of a non-material change, as it depends on a range of factors including the context of the overall scheme, the amendments being sought to the original permission, and the site specific circumstances, all of which can vary from one application to the other.
- 8.4 A judgement on ‘materiality’ is one of fact and degree, and should take into account the likely impact of the amendment on the local environment. What is considered material should be considered against the development as a whole, and should be judged against the original planning permission.

## Consideration

- 8.5 The proposal seeks to amend the description of planning permission LA01/2018/0174/F to incorporate the word “conference.”
- 8.6 The remit of a non-material change is to consider changes a planning permission within the scope of the original permission. In this case the applicant seeks to go beyond this to change the fundamental nature of the approved development. The approved use in terms of The Planning (Use Classes) Order (Northern Ireland) 2015 is a specified sui generis (of its own kind) use- “(i) for the sale of food or drink for consumption on the premises or of hot food for consumption off the premises”. The proposed use for a conference facility is a separate (non-specified sui generis) use and planning permission is required to either change to that use or to add that use to the existing, approved use. Such a change cannot be considered to be non-material.
- 8.7 The Planning (General Permitted Development) Order (Northern Ireland) 2015 at Part 4 to the Schedule makes provision for some specified changes of use without the need for planning permission. This is known as “permitted development”. No provision is made to allow a change of use from the sale of food or drink for consumption on the premises or of hot food for consumption off the premises to a conference facility. This reinforces the need for planning permission for the specific change sought.
- 8.8 A proposal to add this use to the existing, approved use would properly require assessment through the rigours of a planning application. Such assessment would require advertisement and consultation, both of which clearly lie out with the remit of an application for a non-material change. The main relevant issues in this process would be likely access (including junction capacity), parking and effect on listed buildings.
- 8.9 Added to the above, the proposal seeks to change the approved development description. This is beyond the scope of a non-material change. While non-material changes allow potential changes to the nature of the development comprised within the planning permission, they do not allow for variation to the terms of the permission itself as stated in the development description.

## **9 CONCLUSION**

- 9.1 The proposal goes beyond the scope of the NMC process as the change proposed is considered material. Therefore, it is recommended that the request is refused.

# Site location Map

