

<b>Title of Report:</b>	<b>Planning Committee Report – LA01/2020/0744/F</b>
<b>Committee Report Submitted To:</b>	<b>Planning Committee</b>
<b>Date of Meeting:</b>	<b>22<sup>nd</sup> February 2023</b>
<b>For Decision or For Information</b>	<b>For Decision – Referred Application by Cllr Cara McShane</b>

<b>Linkage to Council Strategy (2021-25)</b>	
Strategic Theme	Cohesive Leadership
Outcome	Council has agreed policies and procedures and decision making is consistent with them
Lead Officer	Development Management and Enforcement Manager

<b>Budgetary Considerations</b>	
Cost of Proposal	Nil
Included in Current Year Estimates	N/A
Capital/Revenue	N/A
Code	N/A
Staffing Costs	N/A

<b>Screening Requirements</b>	Required for new or revised Policies, Plans, Strategies or Service Delivery Proposals.		
Section 75 Screening	Screening Completed:	N/A	Date:
	EQIA Required and Completed:	N/A	Date:
Rural Needs Assessment (RNA)	Screening Completed	N/A	Date:

	RNA Required and Completed:	N/A	Date:
Data Protection Impact Assessment (DPIA)	Screening Completed:	N/A	Date:
	DPIA Required and Completed:	N/A	Date:

<b><u>No:</u></b> LA01/2020/0744/F	<b><u>Ward:</u></b> Loughguile And Stranocum
<b><u>App Type:</u></b> Full	
<b><u>Address:</u></b> Lands between 24 & 26 Fivey Road, Armoy. Ballymoney	
<b><u>Proposal:</u></b> Proposed dwelling and detached garage to include proposed driveway, landscaping and all associated site works	
<b><u>Con Area:</u></b> N/A	<b><u>Valid Date:</u></b> 30.07.2020
<b><u>Listed Building Grade:</u></b> N/A	
<b><u>Agent:</u></b> Here Architects. 4-6 Linenhall Street, Ballymoney. BT53 6DP.	
<b><u>Applicant:</u></b> Miss Laura Christie, 5 Carrowcrin Road. Armoy. Ballymoney	
<b><u>Objections:</u></b> 0	<b><u>Petitions of Objection:</u></b> 0
<b><u>Support:</u></b> 2	<b><u>Petitions of Support:</u></b> 0

## **EXECUTIVE SUMMARY**

- Full planning permission is sought for a proposed dwelling and detached garage with associated site works on the basis of commencement of previous permissions D/2004/0897/O & D/2007/0633/RM.
- The site is located within open countryside and outside any Settlement Development Limit as designated within the Northern Area Plan 2016. The site abuts a Site of Local Nature Conservation Importance.
- PPS2 – Natural Heritage, PPS3 - Access, Movement and Parking and PPS 21, Sustainable Development in the Countryside are retained policy documents under the SPPS and provide the relevant policy context in conjunction with the SPPS.
- No construction works are evident on site with the exception of a linear trench dug in proximity to the eastern site boundary.
- Supporting information has been submitted indicating works took place late in 2009 while the permission remained extant.
- Works which may have been carried out within the lifetime of the permission do not appear to amount to any work of construction in the course of erection of the building and no evidence has been presented to determine otherwise.
- Commencement is not deemed to have taken place and the principle of development is unacceptable as it does not meet any of the acceptable types of development identified within PPS21.
- The proposal is contrary to Paragraph 6.73 of the Strategic Planning Policy for Northern Ireland (SPPS) and Policy CTY1 of Planning Policy Statement 21, Sustainable Development in the Countryside.

- DFI Roads, NI Water, Environmental Health, DAERA (Water Management Unit, Regulation Unit & Natural Heritage) were consulted on the application and raise no objection.
- Two letters of support have been received in relation to the proposal.
- The application is recommended for Refusal.
- Reasons for Referral by elected member are attached as an annex to this report.

Drawings and additional information are available to view on the Planning Portal- <https://planningregister.planningssystemni.gov.uk/>

## 1 RECOMMENDATION

- 1.1 That the Committee has taken into consideration and agrees with the reasons for recommendation set out in Section 9 and the policies and guidance in sections 7 and 8 and resolves to **REFUSE** planning permission subject to the reasons set out in section 10.

## 2 SITE LOCATION & DESCRIPTION

- 2.1 The site forms an irregular shaped plot of land extending to approximately 0.26 ha. The site comprises an area between, and to the rear of numbers 24 and 26 Fivey Road. It consists of a narrow, tapered area with only an access point to the public road frontage widening out to the main body of the site set to the rear of the plots at Nos 24 and 26. The main body of the site extends to approximately 50m x 30m and is quite level as a result of significant infilling having taken place on site. The site appears to have previously been utilised as a gravel quarry and evidence on site indicates that ground levels have been raised through the deposition of building waste material. A small area of tarmac is laid towards the access point. The site sits slightly lower than the two neighbouring properties but is approximately 1- 1.5m higher than the land to the immediate rear of the site (southern boundary) which comprises a wooded area.
- 2.2 The site has limited roadside presence due to the narrow access point and mature hedgerows which form the boundaries to both neighbouring properties. The boundaries which form the remainder of the site generally comprises post and wire fencing with a variety of semi-mature trees and more recent planting of beech trees. The north-western boundary abuts an existing shed to the rear of No 26.
- 2.3 A trench is evident to the south-west of the site and appears to correlate with drawing No 02A as submitted. This trench has the appearance of being reasonably recent (on site-inspection) and appears to incorporate concrete.

- 2.4 The site is set within the rural remainder as designated by the Northern Area Plan 2016 and is within a Site of Local nature Conservation Importance (SLNCI). Although two neighbouring properties exist adjacent the site, the character of the area remains fairly rural being accessed off a minor road and is defined by a small number of rural dwellings with agricultural land to the west and woodland to the south and east.

### **3 RELEVANT HISTORY**

Planning reference: D/2004/0897/O.

Location: Rear of 24 & 26 Fivey Road, Ballymoney

Proposal: Proposed Site for New Dwelling

Decision: Permission Granted 08.10.2005.

Planning reference: D/2007/0100/RM

Location: Between 24 & 26 Fivey Road, Ballymoney.

Proposal: Proposed new dwelling and garage.

Decision: Permission Granted 19.06.2007.

Planning reference: D/2007/0633/RM

Location: Between 24 & 26 Fivey Road, Ballymoney.

Proposal: Proposed new dwelling and garage

Decision: Permission Granted 19.08.2008

Planning reference: D/2007/0636/F

Location: Between 24 & 26 Fivey Road, Ballymoney

Proposal: Permission to infill the site with construction & demolition wastes to level of surrounding area & top out with soil and grass over.

Decision: Permission Granted 20.08.2008.

### **4 THE APPLICATION**

- 4.1 Full planning permission is sought for a proposed dwelling and detached garage with associated site works.

## **5 PUBLICITY & CONSULTATIONS**

### **5.1 External**

**Neighbours:** Two letters of support have been received in relation to the proposal from the residents of properties adjacent the subject site. Both comment on the period of time the site has remained vacant while one states that it has recently been the subject of anti-social behaviour. Both support the development of the site as proposed.

### **5.2 Internal**

**Environmental Health Department:** No objection

**NI Water:** No objection

**DFI Roads:** No objection

**DAERA Natural Environment Division:** No objection

**DAERA Water Management Unit:** No objection

**DAERA Regulation Unit:** No objection.

## **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)

The Regional Development Strategy (RDS) is a material consideration.

- 6.3 The Strategic Planning Policy Statement for Northern Ireland (SPPS) is a material consideration. As set out in the SPPS, until such times as a new local plan strategy is adopted, councils will apply specified retained operational policies.
- 6.4 Due weight should be given to the relevant policies in the development plan.
- 6.5 All material considerations and any policy conflicts are identified in the “Considerations and Assessment” section of the report.

## **7 RELEVANT POLICIES & GUIDANCE**

Regional Development Strategy 2035.

Northern Area Plan 2016.

Strategic Planning Policy Statement.

Planning Policy Statement 2: Natural Heritage

PPS 3: Access, Movement and Parking.

Planning Policy Statement 11 – Planning and waste Management.

PPS 21: Sustainable Development in the Countryside.

## **8 CONSIDERATIONS & ASSESSMENT**

- 8.1 The main considerations in the determination of this application relates to: the principle of development, Integration / Character, infilling / contamination, natural heritage, design / amenity, access and services.

### **Principle of Development**

- 8.2 The Northern Area Plan 2016 identifies the site as being located within the countryside as it outside any defined settlement limits.
- 8.3 The Strategic Planning Policy Statement for N. Ireland (SPPS) was introduced in September 2015 and is a material consideration in determining planning applications and appeals. The SPPS promotes sustainable development throughout the planning



system. The guiding principle for planning authorities is that sustainable development should be permitted, having regard to the development plan and all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance.

- 8.4 Paragraph 6.77 of the SPPS states that “in all circumstances , proposals for development in the countryside must be sited and designed to integrate sympathetically with their surroundings.....and meet other planning and environmental considerations including those for drainage , sewerage, access and road safety”.
- 8.5 PPS2 – Natural Heritage, PPS3 - Access, Movement and Parking and PPS 21, Sustainable Development in the Countryside are retained policy documents under the SPPS and provide the relevant policy context in conjunction with the SPPS.
- 8.6 Policy CTY 1 of PPS21 identifies a range of types of development which in principle are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development.
- 8.7 Policy CTY 13 – Integration and Design of Buildings in the Countryside. This policy primarily relates to buildings but also references accesses and other ancillary works.
- 8.8 Policy CTY14 – Rural Character. This policy relates to the potential impact on rural character from buildings and the potential impact of ancillary works.
- 8.9 Policy AMP2 (Access to Public Roads) of PPS3 states that Planning permission will only be granted for a development proposal involving direct access, or 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; and  
The proposal does not conflict with Policy Amp 3 Access to protected Routes.
- 8.10 Policy CTY1 of PPS21 :Sustainable Development in the Countryside sets out the types of development that are, in

principle, acceptable in the countryside but goes on to say that all proposals for development in the countryside must be sited and designed to integrate sympathetically with their surroundings and to meet other planning and environmental considerations.

- 8.11 The integration of buildings in the countryside is considered in Policy CTY13. Other planning and environmental considerations include ribbon development (Policy CTY8) and rural character (Policy CTY14).
- 8.12 The current application proposes a new dwelling and garage on the basis that a material start commenced while planning permission remained extant. As referenced above, outline planning permission was granted for a dwelling on 8/10/2005 (D/2004/0897/O) under the Planning (Northern Ireland) Order 1991. Condition 1 of that permission required that any subsequent application for approval of the reserved matters shall be made within 3 years of the date of outline permission and the development begun before either the expiration of 5 years from the date of outline permission; or the expiration of 2 years from the date of approval of the last of the reserved matters to be approved.
- 8.13 Reserved Matters were submitted (D/2007/0100/RM) and granted on 19/6/2007 incorporating a single storey dwelling and detached garage. A subsequent Reserved Matters application (D/2007/0633/RM) was submitted on 28.11.2007 which remained within three years of the date of outline permission. This application was granted on 20.08.2008 and retained the positioning and design of the previous permission with the introduction of raising ground levels and finished floor level. A separate full application relating to permission to infill the site with construction and demolition wastes to create the proposed levels was submitted in conjunction with the second Reserved Matters application (D/2007/0636/F). Based on the relevant planning history, the time limit for the commencement of construction of the approved dwelling and garage expired on 10.10.2010 (5 years from date of outline permission). The time limit for the commencement of infill works expired on 20.08.2013 and did not include any conditions which would have the effect of extending the time limit of the Reserved Matters.

- 8.14 The principle of development rests on confirmation that a material start was begun in respect of the approved works while planning permission remained extant. Article 36(1)(a) for the purpose of Articles 34 and 35 of the Planning (Northern Ireland) Order 1991 states that where a development consists of or includes the erection of a building, it shall be taken to be begun on the earliest date on which any work of construction in the course of the erection of the building began to be carried out.
- 8.15 Site inspection indicates that infilling and re-grading of the site has been carried out utilising building waste material. Some evidence exists in relation to building waste materials not considered to meet the requirements of the permission to infill as identified by the European Waste Codes in condition 6. In light of this, an Environmental Site Assessment (received 05-MAR-2021) has been completed in relation the composition and quality of materials deposited on site. While this report confirms visual evidence of plastic straps, sheeting etc within the site, investigation works comprising trial pits note that materials are generally consistent across the site and are composed of soft sand, gravelly clay and sub-angular to well-rounded cobbles. The nature of infill materials is not determined to pose an unacceptable risk to either human health or the wider environment as confirmed by Environmental Health and NIEA (Regulation Unit).
- 8.16 No construction works are evident on site with the exception of a linear trench dug in proximity to the eastern site boundary. This trench is indicated on submitted drawing No 02A and is referenced as a concrete foundation although it's position and orientation is not consistent with the layout of the development granted. Site inspection indicates that the trench / foundation is more recent in appearance than may be expected based on the date of permission with limited overgrowth, although there does appear to be evidence of a concrete base. It is acknowledged that the limited overgrowth evident on site-inspection could be as a result of subsequent clearance works.
- 8.17 The applicant has confirmed that the local Building Control Department did not inspect either the identified trenchworks or the pouring of concrete foundations. While it would be unusual not to engage with the building control process as part of construction works this would not be fatal to the proposal in the determination of

commencement of permission granted. However, the existing trench / foundation does not correlate with any part of the footprint of the approved dwelling in terms of positioning, orientation or length but rather appears to transect and extend beyond it. The limited nature of the identified foundation works and particularly the inaccurate positioning and orientation relative to planning permission granted indicates that the works do not relate to any work of construction in the course of the erection of the building which could be considered to constitute a material start for the purposes of the current application. Some additional planting has taken place around the site boundaries in the form of beech hedging with an invoice confirming purchase of hedging in 2009. The undertaking of boundary planting would not be considered as any work of construction.

8.18 In relation to the timeframe relating to the commencement of the works identified, the supporting information indicates that this took place late in 2009 while the permission remained extant. Evidence includes invoices from a local construction company with associated bank statements, invoices from a concrete supplier, evidence from a local engineering business and an additional invoice for the purchase of hedging. The submitted information includes:

- An invoice for the supply and delivery of 1000 tonnes of fill to Fivey Road with additional load of 10mm stone on 13/10/2009. Payment received 20/10/2009.
- An invoice dated 02/11/2009 for the additional supply of 700 tonnes of fill to Fivey Road with the hire of digger to level. Payment received 04/11/2009.
- A receipt for concrete for DC Construction delivered to Fivey Road dated 9/11/2009.
- An invoice confirms purchase of 200m of beech hedging on 13/11/2009 with an additional invoice dated 1/12/2009 for the planting of hedging and digging and pouring of foundations for house. Payment for these works were received on 3/12/2009.
- A letter from Equilibrant Ltd (Consulting Engineers) indicates foundation inspections took place on 09/11/2009.

8.19 Aerial photographs of the subject site are available with confirmed fly-over dates ranging from 11/04/2010 to 24/5/2018 (Appendix 1).

The first image is dated 11/04/2010, approximately 5 months after the works outlined in the submitted evidence and date of inspection referenced by Equibrant Ltd (and at which time the permission remained extant). This period extends during the winter season during which very limited growth would be expected. The aerial image includes a number of small structures on site but does not appear to indicate any excavation / construction works, nor is the concrete foundation evident.

- 8.20 The image from 07/05/2013 (which is after expiration of permission) again does not clearly indicate construction works and any excavation appears to be limited to some possible site clearance / laying of hardstanding. The foundation trench is again, not evident.
- 8.21 The image dated 8/6/2015 indicates much more extensive excavation works being undertaken at that time. An excavator is evident on site, the small structures remain along the western boundary and the remainder of the site appears to have been cleared. No additional works beyond the obvious ground works are identifiable.
- 8.22 The image dated 24/5/ 2018 indicates that significant additional material has been deposited on site since the previous image and remains positioned on much of the western and southern site area. Deposition of material may have taken place in stages over a period of time as a small central area of deposited material appears to have become overgrown while the remainder comprises bare material.
- 8.23 The above images indicate very limited works on site pre 2013 at which time planning permission would have expired and substantial deposition of material on site is clearly evident after the expiration of the permission granted for infilling (20/8/2013). Although some degree of infilling may have pre-dated this but would not be considered to represent a material start. Even if the full permission to infill the site with material was implemented while it remained extant, this would not have the effect of similarly commencing development in relation to the Reserved Matters.

- 8.24 Based on the evidence submitted and timeline indicated, one would expect the extent of works referenced (which included significant ground works) to be clearly evident on the aerial photograph dated such a short time afterwards on 11/4/2010. Certainly, a recently dug trench with poured concrete foundation (even to the limited extent indicated) would be expected to be readily identifiable. I also note that the submitted construction company invoices are dated 2009 but indicate VAT at 20% (although not charged). This rate of VAT was not introduced in the UK until 4th January 2011 and is reflected in the receipt for hedging (dated 13/11/2009) which was charged at 15% VAT. The aerial images indicate significant inconsistency between the timeline identified by supporting information and that evident on aerial images.
- 8.25 Clarification has been sought from the agent regarding the disparity between the positioning of the foundation on site and the approved development as well as between the submitted evidence timeline and aerial photographs available. The agent has stated that the images are not conclusive and that the site was extensively overgrown (including the foundation) at the time the current applicant purchased. The agent reiterates the submission from Equibrant Ltd regarding inspection of said foundation. While an overgrown site may limit the evidence of works visible on aerial photographs, the time period between inspection of foundations and the available images is short, and during the winter period when growth would be limited. Additionally, the site does not appear particularly overgrown and the significant lack of works appears evident. In regard to the foundation positioning, the agent has advised that this may have been due to human error and that part of the foundation accords with the footprint of the dwelling as approved. The agent has also advised that the current applicant lives locally, purchased the site on the basis that a material start had been begun and has invested substantially in the site including the undertaking of clearance works and submission of detailed information as part of the current application.
- 8.26 Although it is possible some works took place in relation to excavation and access arrangements within the lifetime of the permission, Article 36 (1) (a) does not mention the undertaking of access works on site for the purposes of commencement. Any works which may have been carried out within the lifetime of the

permission do not appear to amount to any work of construction in the course of erection of the building and no evidence has been presented to determine otherwise. Based on the information outlined above, commencement cannot be deemed to have taken place. As such the principle of development is unacceptable and does not meet any of the acceptable types of development identified within PPS21.

- 8.27 In considering the current application it is necessary to demonstrate that relevant works were begun within the lifetime of the permission granted. The fact remains that the identified foundation / works could not be considered to correlate in terms of positioning or orientation to any part of the development granted and significant discrepancies exist between the supporting information and aerial images. The proposal does not otherwise meet any of the types of development outlined in Policy CTY1 and is reliant on commencement of the previous permission. As insufficient information has been submitted to indicate that any work of construction in the course of the erection of the approved development was commenced while the permission remained extant, the current proposal is considered unacceptable and contrary to Policy CTY1 and the SPPS.

### **Infilling / Contamination**

- 8.28 The site is located immediately adjacent a designated site of local nature conservation importance (SLNCI) and appears to have been previously excavated due to the existence of a gravel pit which would appear to necessitate the infilling of ground levels approved under D/2007/0636/F (and indicated on D/207/0633/RM). Infilling has taken place and ground levels are fairly level although raised above the ground level to the rear (south) of the site. D/2007/0636/F incorporated conditions specific to the European Waste Codes of material which was suitable for use and related to inert waste material including building waste such as rubble etc. Site inspection indicated that the material on site comprised such building material but also appeared to include some unsuitable waste material such as plastic waste etc.
- 8.29 Additional information was sought from the agent in relation to ground levels and the nature of material deposited on site. The agent has submitted clarification of ground levels based on a

Temporary Benchmark (Roadside Fire Hydrant) and Ordnance Datum points. The agent has confirmed that ground levels are consistent with those approved under D/2007/0633/RM. Additional work in the form of an Environmental Site Assessment has been undertaken which confirms that the materials on-site are consistent with demolition waste material with the exception of some occasional plastic and wood debris. Infill material is generally identified as acceptable and is not considered to pose an unacceptable risk to either human health receptors or the wider environment. Consultation has been carried out with both Environmental Health and DAERA Regulation Unit with no objections raised.

### **Character**

- 8.30 The SPPS, Paragraph 6.73 (bullet point 5) states that planning permission will be refused for a building which creates or adds to a ribbon of development.
- 8.31 Policy CTY 8 of PPS21 entitled 'Ribbon Development' also states that planning permission will be refused for a dwelling that 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. Paragraph 5.33 of the Justification and Amplification text outlines what can constitute a ribbon of development and includes buildings sited back, staggered or at angles... if they have a common frontage or they are visually linked.
- 8.32 For the purpose of the policy a continuously built up frontage "includes a line of three or more buildings along a road frontage without accompanying development to the rear". The generally accepted definition of when a building has a frontage to a road is if the plot on which it stands abuts or shares a boundary with that road. The proposal does not represent an exception to Policy CTY 8.
- 8.33 The original permission was not considered to represent ribbon development but pre-dated the policies and definitions of both PPS21 and the SPPS. The site is unusual as it comprises the main body of the site set to the rear of the adjacent dwellings either side



and tapers to a narrow roadside frontage comprising only the access point. As the site comprises little to no road frontage with the exception of the access point, it remains acceptable in terms of character.

### **Integration /Design**

- 8.34 Setting aside the principle of development (commencement), the current application includes amendments to the positioning and design of the proposed dwelling within the approved site.
- 8.35 Minor adjustments to the positioning of the dwelling were originally suggested with more substantial repositioning proposed to address concerns raised by NIEA (NED). The current positioning is fairly central within the overall site footprint with access taken from the public road and extending along the eastern site boundary. Limited amenity space is retained to the immediate rear of the dwelling as indicated on the submitted site plan. No physical barrier exists to the remainder of the site which remains part of the application area and this area has only been removed from the proposed scheme to address NIEA concerns. The larger area set to the western half of the main body of the site remains (to the rear of No 26). The proposed dwelling consists of a single storey dwelling with pitched roof, and single storey projections to the front, rear and eastern gable. The dwelling is generally well proportioned and reflective of a modern interpretation of the linear, narrow gabled form considered appropriate rural design.
- 8.36 Fenestration details are vertical in emphasis, the form and scale are appropriate to the area and the overall design is appropriate to the siting. The front projection would not ordinarily be considered appropriate rural design but is modest, does not dominate the form and is fairly sensitive to the overall design which retains its rural character. The use of smooth render is appropriate and limits the visual impact from the projection as it is not finished in materials distinct from the overall dwelling. Chimneys are well proportioned and appropriately positioned on the ridge while the roof tiles are blue / black, in keeping with the rural area. Although front projections can create a rather suburban form, the overall design is acceptable in terms of the Rural Design Guide and when combined with the secluded nature of the overall site is generally acceptable and continues to integrate.

## **Amenity**

- 8.37 Although the proposal remains in general conformity with the previous approval, the proposed repositioning has the effect of reducing separation to No 26 with a distance of approximately 15m. This has the potential to exacerbate overlooking / privacy issues, however both dwellings are single storey and No 26 includes an outbuilding in close proximity to the rear elevation providing additional screening to the most private area to the rear. Separation to No 24 is similar in distance, and although it is slightly elevated above the proposed site, it too remains single storey and due to the relative positioning / orientation is unlikely to be significantly impacted as a result of direct overlooking or overshadowing.
- 8.38 The current proposal would be unlikely to impact on existing dwellings to an unacceptable degree as a result of overlooking or overshadowing and will not detrimentally impact on surrounding residential amenity, while also providing suitable arrangements for the current proposal. Additional planting is proposed (some of which has already been carried out) to more appropriately define the site and will reflect the surrounding woodland character.

## **Natural Heritage**

- 8.39 The site is immediately adjacent a SLNCI (as referenced above) which includes an area of scrub and birch woodland. NIEA has not raised any concerns regarding potential impact on this designation but did require additional information in relation to the potential impact on protected species (badgers).
- 8.40 A badger survey has been undertaken which identifies any potential impact on badger populations and recommends mitigation measures to prevent any unacceptable impact on badgers or their habitat. The proposal has also been amended to remove any proposed groundworks outside the recommended separation distance to any identified setts and while this results in repositioning of the proposed dwelling it remains within the original red line with a small degree of overlap between the proposed dwelling at that previously granted. The proposed amendments therefore have no direct implication on the principle of

development. NIEA (Natural Environment Division) has been consulted and raise no further objections to the proposal.

### **Access**

- 8.41 Access is taken from the approved access point into the site. DFI Roads has been consulted and raise no objections subject to proposed conditions.

### **Services**

- 8.42 Mains water supply is available, and the dwelling is to be served by a septic tank with surface water dealt by way of soakaways. Water Management unit has been consulted and no objections raised. No other issues have been raised by consultees.

### **Representations**

- 8.43 Two letters of support have been received in relation to the proposal from the residents of properties adjacent the subject site. Both comment on the period of time the site has remained vacant while one states that it has recently been the subject of anti-social behaviour. Both support the development of the site as proposed

### **Habitats Regulation Assessment**

- 8.44 The potential impact of this proposal on Special Areas of Conservation, Special Protection Areas and Ramsar sites has been assessed in accordance with the requirements of Regulation 43 (1) of the Conservation (Natural Habitats, etc) Regulations (Northern Ireland) 1995 (as amended). The Proposal would not be likely to have a significant effect on the Features, conservation objectives or status of any of these sites.

## **9 CONCLUSION**

- 9.1 Insufficient information has been presented to confirm that works commenced in relation to D/2007/ 0633/RM as defined within Article 36 (1) of the Planning (Northern Ireland) Order 1991, while the permission remained extant. Contradictory evidence exists

regarding the commencement of any works and aerial photographic images do not corroborate supporting evidence.

9.2 The identified foundation is not reflective of the permission granted and insufficient evidence exists to confirm commencement of works. The principle of development is considered unacceptable. The proposal is contrary to Paragraphs 6.73 of the Strategic Planning Policy for Northern Ireland (SPPS) and Policy CTY 1 of PPS 21. Having regard to the policy context and other material considerations, the proposal is considered unacceptable and planning permission is recommended to be refused.

## 10 **Refusal reason**

10.1 The proposal is contrary to 6.73 of the Strategic Planning Policy for Northern Ireland (SPPS) and Policy CTY1 of Planning Policy Statement 21, Sustainable Development in the Countryside in that there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.

# Site Location Plan



 EXTENT OF LAND RELATING TO APPLICATION  
SITE AREA 0.64ac / 0.26ha

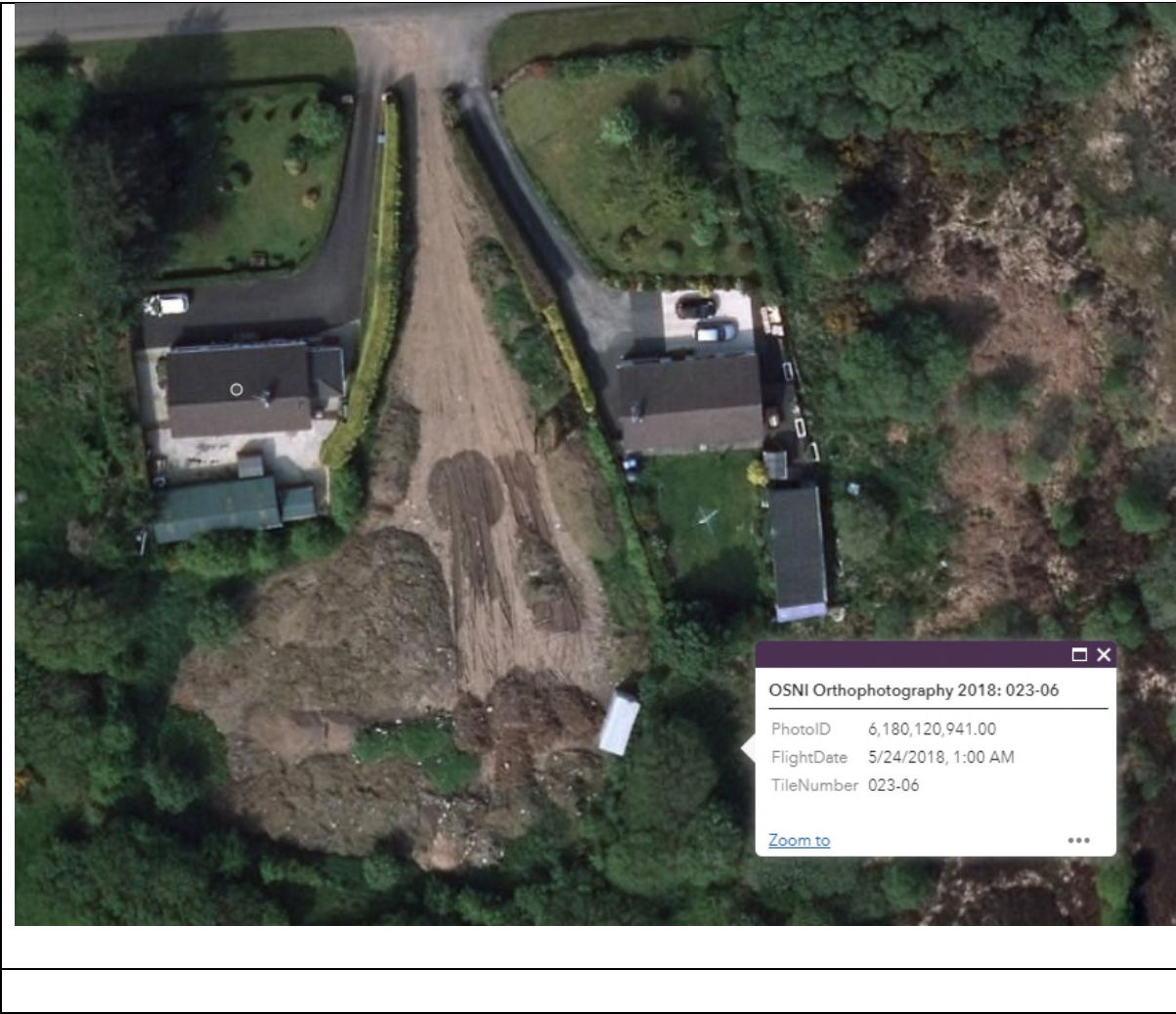
## Appendix 1 – Aerial Images











## **Appendix 2 - Referral Request**

A chairde

Hope all's well. I would be most grateful if the above referenced application could be referred to the full Planning Committee for further consideration.

The application relates to lands between 24 & 26 Fivey Road, Armoy, Ballymoney.

This was a finely balanced decision - 1 reason for refusal.

Detailed information submitted on protection of previous planning application has not been considered fully. The applicant is a local person, born and raised in the area and recently married, and who wants to continue to live here and raise a family.

She purchased the site in good faith, on the basis that permission was protected. She has incurred significant costs in relation to site purchase, fees etc all which will be lost if site not approved. The application is over 2 years in the system, submitted 30th July 2020.

Look forward to hearing from you.

Best wishes

Cara

# Addendum

## LA01/2020/0744/F

### 1.0 Previous Recommendation

- 1.1 Application LA01/2020/0744/F was presented to planning committee on 23.11.2022 with a recommendation to refuse on the basis that the identified foundation is not reflective of the permission granted and insufficient evidence exists to confirm commencement of works. The principle of development is therefore considered unacceptable.
- 1.2 Refusal was recommended for the following reason:
- “The proposal is contrary to 6.73 of the Strategic Planning Policy for Northern Ireland (SPPS) and Policy CTY1 of Planning Policy Statement 21, Sustainable Development in the Countryside in that there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement”.*
- 1.3 The application was deferred for 2 months to facilitate submission of further information in order to bridge gaps in the invoicing evidence previously received.

### 2.0 Update

- 2.1 To date no further information / evidence in support of the application has been received and as such the recommendation to refuse remains unchanged.

### 3.1 Recommendation

- 3.2 That the Committee note the contents of this Addendum and agree with the recommendation to Refuse the application for the following reason:

*“The proposal is contrary to 6.73 of the Strategic Planning Policy for Northern Ireland (SPPS) and Policy CTY1 of Planning Policy Statement 21, Sustainable Development in the Countryside in that there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement”.*

**SITE VISIT REPORT: MONDAY 21<sup>st</sup> November 2022**

*Committee Members: Alderman Baird, Boyle, Duddy, S McKillop and McKeown; Councillors Anderson, Dallat O'Driscoll (Vice Chair), Hunter, McGurk, MA McKillop, McMullan (Chair), P McShane, Nicholl, Peacock, Scott and Storey*

**11.15 am**

LA01/2020/0744/F – Lands between 24 and 26 Fivey Road, Armoey.

**App Type: Full Application**

**Proposal: Proposed dwelling and detached garage to include proposed driveway, landscaping and all associated site works.**

**Present:** Ald Baird, Ald S McKillop, Councillor Hunter, Official E Hudson.

**Apologies:** Ald Boyle

**Comments:**

Viewed from site entrance and also rear of site to view trench. Official outlined the details of the application and the reason for refusal. Official advised that the principle of development was reliant on a material start having been commenced on the site within the time frame of previous outline and reserved matters applications. The key date for commencement having been completed was 10<sup>th</sup> October 2010. Official advised there was also a separate application submitted for infilling of the site however this did not lengthen the time limit of the reserved matters application. Official advised that evidence was submitted by the agent to support the principle of development taking place within the time frame. This included receipts for fill, concrete and a letter from an engineering company stating a site inspection of a foundation was carried out in November 2009. No building control inspection was carried out on the site. Official referred to dated aerial photos of the site which do not demonstrate any foundations were in place during the extant period of the application. The only aerial image which shows a trench in place is a more recent receipt overview which would be outside the time of the planning permission. Official also advised that this trench was not in line with approved drawings. Members and officials viewed the trench at the rear of the site and members queried if concrete was poured as it was overgrown. Official advised that concrete was evident in the base of the trench at the time the case officer viewed the site. However, it has not been proven that this was done during the extant planning permission.

Official advised that the evidence presented was contradictory and it has not been sufficiently demonstrated that commencement took place within the time frame of the outline or reserved matters application. Official also advise that the application did not meet Policy CTY 8 of PPS 21 as there was wasn't a line of 3 buildings along the road frontage. The application was contrary to Policy CTY 1 of PPS21.

E Hudson      21/11/2022