



Title of Report:	Planning Committee Report – LA01/2020/1135/F
Committee Report Submitted To:	Planning Committee
Date of Meeting:	22nd March 2022
For Decision or For Information	For Decision – Referred Application by Cllr Beattie, Alderman Robinson, Fielding, McGlinchey

Linkage to Council Strategy (2021-25)	
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

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

Screening Requirements	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:

No: LA01/2020/1135/F **Ward:** Dungiven

App Type: Full

Address: Site at 80a Curragh Road Dungiven

Proposal: Proposed Replacement Dwelling

Con Area: N/A **Valid Date:** 03.11.2020

Listed Building Grade: N/A

Agent: AQB Architectural Workshop, 12a Ebrington Terrace,
Derry, BT47 6JS

Applicant: Meave Quigg, 80a Curragh Road, Dungiven

Objections: 0 **Petitions of Objection:** 0

Support: 0 **Petitions of Support:** 0

EXECUTIVE SUMMARY

- Full planning permission is sought for a replacement dwelling at 80a Curragh Road, Dungiven.
- No. 80a is a detached, single storey structure of temporary construction. No. 80a shares a curtilage and access with adjacent bungalow no. 80. The red line extends east of the existing defined curtilage of no 80 to include a small grassed parcel of land to the east of 80a. The site is located in the countryside outside any environmental designations.
- The replacement candidate is of temporary construction and is therefore not eligible for replacement under CTY 3.
- There are no overriding reasons why this development is essential and could not be located in a settlement and is contrary to CTY 1.
- The amended design and scale of the dwelling is considered sympathetic for the site.
- The applicant has not provided satisfactory long term evidence that a new dwelling is a necessary response to the particular circumstances of the case and that genuine hardship would be caused if planning permission were refused and it has not been demonstrated that there are no alternative solutions to meet the particular circumstances of this case, the proposal is therefore contrary to Policy CTY6 of PPS21.
- Refusal is recommended.
- 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/simple-search>

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** full planning permission subject to the reasons set out in section 10.

2 SITE LOCATION & DESCRIPTION

- 2.1 The site is described as 80a Curragh Road, Dungiven but is not identified with an address on Spatial NI or Land and Property website.
- 2.2 No. 80a is a detached, single storey structure of temporary construction. It is yellow in colour with white PVC windows and white guttering. It has a low pitched roof and is set on a concrete base. No. 80a shares a curtilage and access with adjacent bungalow no. 80 to the immediate west of the site.
- 2.3 The red line extends east of the existing defined curtilage to include a small grassed parcel of land to the east of 80a. The site is surrounded by agricultural lands to the north, east and south. To the west of no. 80 there are footings laid for a dwelling.
- 2.4 The southern roadside boundary is defined by an existing hedgerow. The western boundary is undefined and open to adjacent dwelling no. 80. The rear northern boundary is defined by mature trees. To the immediate east of the mobile is an existing high hedgerow which will be removed to provide the extension of curtilage. The eastern boundary is defined by post and wire fencing.
- 2.5 The site is in the rural countryside outside of any defined settlement limit as per the Northern Area Plan 2016

3 RELEVANT HISTORY

3.1 There is no planning history on the application site.

3.2 Planning history in the vicinity of the site includes;

- B/1976/0198 – Permission refused 13.08.1976 for bungalow at Hass Dungiven.
- B/1977/0122 - Permission Granted 19.05.1977 for bungalow at Hass, Dungiven.
- B/1980/0167- Permission Granted 21.08.1980 for bungalow at Curragh Road, Hass.
- B/1988/0178 - Permission Granted 12.06.1988 for Retention of dwelling at 80 Curragh Road, Hass, Dungiven.
- B/2000/0519/A41 – Permitted development 02.01.2001 for Erection of dwelling - amendments to original application B/167/80 at Curragh Road, Hass, Limavady

4 THE APPLICATION

4.1 This is a full application for a proposed replacement dwelling at 80a Curragh Road, Dungiven. The replacement candidate is a detached, single storey prefabricated structure. The proposed dwelling as originally submitted is a one and a half storey detached dwelling. The dwelling proposed an overall ridge height of approximately 7.5m, a frontage of approximately 14.3m and a gable depth of approximately 9m. Amended plans were received on 15.08.2022 which reduced the dimensions to 6.8m ridge, 13.3m frontage and a 8.7m gable. The dwelling will front onto Curragh Road and be located on a similar footprint to the structure to be replaced, nonetheless sited slightly closer to the road, with the curtilage extended to the east. A detached garage is proposed to the east of the dwelling. The garage has been reduced to single storey.

5 PUBLICITY & CONSULTATIONS

5.1 External

Advertising: Advertised in the Coleraine Chronicle on the 18.11.2020.

Neighbours: 1 neighbour notified on 13.11.2020.

No letters of support or objection were received on this application.

5.2 Internal

NIEA WMU/NED: no objections.

NI Water: no objections.

DFI Roads: no objections.

Environmental Health: no objections.

SES: no objections

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

6.4 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.

6.5 Due weight should be given to the relevant policies in the development plan.

6.6 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

The Strategic Planning Policy Statement (SPPS)

Planning Policy Statement 3 (PPS 3) – Access, Movement and Parking

Planning Policy Statement 21 – Sustainable Development in the Countryside

Building on Tradition: A Sustainable Design Guide for the Northern Ireland Countryside

8 CONSIDERATIONS & ASSESSMENT

- 8.1 The main considerations in the determination of this application relate to the principle of development, design and visual integration, Habitats Regulation Assessment and Access arrangements.

Principle of Development

- 8.2 The proposal must be considered having regard to the NAP 2016, SPPS, and PPS policy documents specified above.
- 8.3 Planning Policy Statement 21 – Sustainable development in the Countryside, Policy CTY 1 notes there are 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, this includes a replacement dwelling in accordance with Policy CTY 3.
- 8.4 Policy CTY 3 notes that planning permission will be granted for a replacement dwelling where the building to be replaced exhibits the essential characteristics of a dwelling and as a minimum all external structural walls are substantially intact. For the purposes of this policy all references to ‘dwellings’ will include buildings previously used as dwellings. Buildings designed and used for agricultural purposes, such

as sheds or stores, and buildings of a temporary construction will not however be eligible for replacement under this policy.

- 8.5 The proposed structure to be replaced is a detached, single storey prefabricated building. The structure is painted yellow with white PVC windows, white guttering and is set on a brick plinth.
- 8.6 In an office meeting (13.05.21) the agent advised that the structure has been on site since 1997; is set on a block plinth and the block plinth has a foundation; that it was either craned onto the site or was built up off the plinth or came in 3 to 4 parts and erected on site. Further information received from the agent in May 2021 advised that the structure was erected on the site, that foundations were poured for the base with walls and supports at perimeter wall and internal support added, timber joists span the walls and were constructed on site from timber. A further letter from the agent dated 10/09/21 stated that the structure is of timber construction, built off concrete foundations with a brickwork substructure. Despite the inconsistencies in the evidence provided, it remains that the structure which is subject of this application does not have planning permission and planning permission would have been required. The agent advised that the structure has been on site since 1997, even though the structure may be immune, the structure is still not eligible for replacement under CTY3 of PPS21.
- 8.7 The precedent examples raised by the agent in support of the application and the Planning Departments considerations are listed as follows (Refer to Additional information and Doc 03 uploaded onto the portal);
- 814 Seacoast Road, planning history C/2014/0429/O and LA01/2015/0640/RM - Building materials on file photos appear to be corrugated sheets and the building is described as a holiday shack. However, a building built using corrugated sheeting is not necessarily temporary. In any event this is post dated by PAC decision 2018/A0172 and is not determining. Please refer to paras 8.11 and 8.12 of the report for discussion of appeal case 2018/A0172.
 - 806 Seacoast Road, planning history C/2014/0056/O and LA01/2015/0953/RM (appeal dismissed) - Outline describes structure as having exposed concrete block walls. From photos

there appears to be an under build platform with block built walls covered in panel sheets.

- 804 Seacoast Road, planning history LA01/2016/1072/F - Report states external structural walls appear to be substantially intact. Photos show blockwork construction.
- 800 Seacoast Road, planning history LA01/2015/0744 - Photos show permanently constructed dwelling.
- 860 Seacoast Road, planning history C/2003/0222 - Mid terrace building of permanent construction.
- 830 Seacoast Road, planning history LA01/2017/1158/F - Photographs show permanently constructed dwelling.
- 792 Seacoast Road, Planning history C/2010/0363 - approved as an infill site to replace existing mission hall, not comparable to replacement dwelling.
- 710 Seacoast Road, planning history B/2010/0166 - not comparable as proposal was for replacement of existing self-catering holiday cottage with 4 single storey detached self-catering units, including relocated site entrance/exit.
- 160 Carrowclare Road, planning history LA01/2017/1291/O and LA01/2021/0798/RM - agent states that dwelling was approved to replace a corrugated tin structure. This proposal was described on the P1 form (same agent) as off-site replacement dwelling and garage. Approved as a replacement dwelling due to concrete floor and permanency of building.
- 41 Ballygudden Road A/2001/0493/F (previously incorrectly referenced A/2010/0493/F) – Agent shows images of the new/built replacement dwelling in his Doc 03 and a google earth image of the building that was subject to replacement. This building is in poor disrepair and it is difficult from the image to determine the nature of the building at the time of approval some 20 years ago. Nonetheless the permission was granted by a different Planning Authority under a different policy context prior to the publication of PPS 21 in 2010.

- 122 Dunlade Road - B/2000/0394/F - Agent shows images of the new/built replacement dwellings in his Doc 03 submission but did not provide details or evidence of the building originally on site which was subject to replacement. The application was described as erection of replacement bungalow with no mention of temporary building. Nonetheless this was prior to the release of PPS 21 in 2010 and approved under a different policy context by a different Planning Authority.
- 122a Dunlade Road - B/2003/0102/F – Agent shows images of the new/built replacement dwellings in his Doc 03 submission but did not provide details or evidence of the building originally on site subject to replacement. The application was described as erection of single storey dwelling and detached domestic garage with no mention of temporary building. Nonetheless this was prior to the release of PPS 21 in 2010 and approved under a different policy context by a different Planning Authority.
- Craigbrack Road - A/2002/0292 - No details or evidence has been provided of the building originally on site subject to replacement. The application was described as Erection of single storey replacement dwelling with no mention of temporary building. Nonetheless this was prior to the release of PPS 21 in 2010 and approved under a different policy context by a different Planning Authority.

8.8 Most cases raised above are not comparable as there is clear evidence of block work construction rendering the buildings to be permanent, or they relate to applications such as mission hall which is not comparable to the application, or there has been a lack of evidence provided by the agent or the date of the decisions pre date PPS 21.

8.9 Doc 05 submitted (27.04.2022) includes images of modular dwelling design. This includes image of extracts from websites of modular homes in Bolton, Coventry, Grillagh Water House and Fasthouse (limavady based). These images show modular type designs, but do not support the case for the eligibility of this replacement case.

8.10 CTY3 supports a replacement dwelling where the building exhibits the essential characteristics of a dwelling and all external structural walls are substantially intact. It goes on to add that a building of temporary construction will not however be eligible for replacement.

8.11 Three appeal decisions are of relevance in this case.

- PAC 2013/A0047 Milltown Road, Lislea, Camlough, Newry - replacement of mobile home dismissed. PAC stated “whilst they collectively indicate a degree of permanency of habitation, the test in CTY3 is whether or not there is a building to be replaced and if it exhibits the essential characteristics of a dwelling. The appeal proposal involves not a building but a mobile home which is of temporary construction and does not exhibit the essential characteristics of a dwelling”.
- PAC 2013/0074 Ballygowan Road, Hillsborough - replacement dwelling in lieu of prefabricated dwelling. PAC stated “taking PPS21 as a whole there is provision for residential caravans and mobile homes under CTY9. The policies contained within PPS21 make distinction between dwellings and caravans. The wording of CTY3 in relation to the building to be replaced exhibiting the essential characteristics of a dwelling and as a minimum having all external structural walls intact suggests that to qualify, the structure must be a building with conventionally built structural walls rather than be comprised of prefabricated shell structures such as caravans. I am reinforced in this by the distinction throughout PPS21 between dwellings and caravans / mobile homes. Given this distinction I am not persuaded that a caravan which for the purposes of the policy is of temporary construction, can benefit from the policy provisions of CTY3, notwithstanding how long it has occupied a site or its means of attachment to the ground”.
- PAC 2018/A0172 Stewarts Road, Annalong- is directly comparable and was dismissed for a replacement dwelling.
- The PAC state “subject building is modest single storey prefabricated dwelling” “the appellant told me that it was framed together on site with in situ block work, render, electricity, plumbing, heating and drainage”. PAC go on to state “the word “buildings” in CTY3 indicates to me that the paragraph is meant to apply to operational development as well as portable structures such as caravans, portacabins or mobile homes. I accept that in this case operational development was required to erect the building. It was created by connecting prefabricated sections. A platform on which to anchor it was constructed. However this

platform does not appear as an integral part of the building. The thinly rendered external walls, roof covering and general appearance of the structure are similar to those of temporary buildings”... “I consider that the building is temporary in nature and it is not eligible for replacement under CTY3.

- In Doc 03 the agent rebuts the councils use of PAC ref 2018/A0172. In response Officials would note, PAC ref 2018/A0172 confirms the principle of development under CTY 3 is not acceptable. A prefabricated building of similar construction to the building in question was considered “temporary in nature and not eligible for replacement under CTY 3” (para 7). The appeal sites location in an AONB, visual impact, impact on ribbon development/rural character, supply of building, enforcement history, location on site, were further considerations in the case in terms of integration. These considerations are secondary to the principle of development where the commissioner concluded this form of temporary fabricated building was not considered eligible for replacement under CTY3, and is directly comparable to this case. A photo of the replacement candidate subject to this appeal is included in the Planning Committee presentation.

8.12 The structure in question has been in existence over 5 years (presence on aerial photos) and has a block work base. From the evidence provided by the agent it is unclear whether the structure was brought to the site as one or multiple pieces or whether it was erected on site. However, the external walls, roof covering and pitch and general appearance of the structure set on the brick plinth is similar to those of temporary buildings. The case from Seacoast Road are post dated by PAC decision 2018/A0172 and are not determining. CTY3 supports a replacement dwelling where the building exhibits the essential characteristics of a dwelling and all external structural walls are substantially intact. It goes on to add that a building of temporary construction will not however be eligible for replacement. The building is of temporary construction and is not eligible for replacement under CTY 3.

8.13 The agent submitted a letter via email on the 12.08.22 which listed the medical conditions of the applicant and which stated that a bungalow would greatly help enhance her quality of life. In response to the Planning Department’s request, further information was received on 15.08.22. The information has been considered against CTY 6 – Personal and Domestic Circumstances. CTY 6 notes Planning

permission will be granted for a dwelling in the countryside for the long term needs of the applicant, where there are compelling, and site specific reasons for this related to the applicant's personal or domestic circumstances and provided the following criteria are met: (a) the applicant can provide satisfactory evidence that a new dwelling is a necessary response to the particular circumstances of the case and that genuine hardship would be caused if planning permission were refused; and (b) there are no alternative solutions to meet the particular circumstances of the case, such as: an extension or annex attached to the existing dwelling; the conversion or reuse of another building within the curtilage of the property; or the use of a temporary mobile home for a limited period to deal with immediate short term circumstances. All permissions granted under this policy will be subject to a condition restricting the occupation of the dwelling to a named individual and their dependents.

- 8.14 The P1 form details that the applicant's (Maeve Quigg) address is 80a Curragh Road. However, the medical letter submitted by the applicant details the applicants address as no 80 Curragh Road. The medical issues have not been explained and it has not been demonstrated that a new bungalow is a necessary response to particular personal or domestic circumstances and that a genuine hardship would result if the application is refused. In addition, the structure which is subject of replacement is single storey but the proposed dwelling is one and a half storey and is not supported by the medical letter. In addition, there has been no evidence provided to show that all alternative solutions such as extension / annex or conversion have been explored to meet the particular circumstances of the case. The application is therefore contrary to CTY 6.
- 8.15 There have been no overriding reasons provided as to why the development is essential at this location and could not be located in a settlement, the proposal is therefore contrary to CTY 1.

Design and Visual integration

- 8.16 CTY 3 notes that proposals for a replacement dwelling will only be permitted where all the following criteria are met: • The proposed replacement dwelling should be sited within the established curtilage of the existing building, unless either (a) the curtilage is so restricted that it could not reasonably accommodate a modest sized dwelling, or (b) it can be shown that an alternative position nearby would result in demonstrable landscape, heritage, access or amenity benefits;

- 8.17 The proposed dwelling is to be sited within the existing curtilage however, the curtilage will extend further to the east to allow space for the proposed garage and proposed new access point. The existing curtilage is limited and would not be able to reasonably accommodate a modest sized dwelling with detached garage including sufficient parking/amenity space of today's modern standards. The extension of the curtilage to the east in itself is not considered detrimental to the rural character and will provide sufficient space/amenity space at the dwelling.
- 8.18 CTY 3 further note's that; • the overall size of the new dwelling should allow it to integrate into the surrounding landscape and would not have a visual impact significantly greater than the existing building; • the design of the replacement dwelling should be of a high quality appropriate to its rural setting and have regard to local distinctiveness;
- 8.19 Planning Policy Statement 21 – Sustainable development in the Countryside CTY 13 notes that planning permission will be granted for a building in the countryside where it can be visually integrated into the surrounding landscape and it is of an appropriate design. A new building will be unacceptable where:
- (a) It is a prominent feature in the landscape; or
 - (b) The site lacks long established natural boundaries or is unable to provide a suitable degree of enclosure for the building to integrate into the landscape; or
 - (c) It relies primarily on the use of new landscaping for integration; or
 - (d) Ancillary works do not integrate with their surroundings; or
 - (e) The design of the building is inappropriate for the site and its locality; or
 - (f) It fails to blend with the landform, existing trees, buildings, slopes and other natural features which provide a backdrop; or
 - (g) In the case of a proposed dwelling on a farm (see Policy CTY 10) it is not visually linked or sited to cluster with an established group of buildings on a farm.
- 8.20 Policy CTY 14 notes that planning permission will be granted for a building in the countryside where it does not cause a detrimental change to, or further erode the rural character of an area. A new building will be unacceptable where:
- (a) it is unduly prominent in the landscape; or
 - (b) it results in a suburban style build-up of development when viewed with existing and approved buildings; or

- (c) it does not respect the traditional pattern of settlement exhibited in that area; or
- (d) it creates or adds to a ribbon of development (see Policy CTY 8); or
- (e) the impact of ancillary works (with the exception of necessary visibility splays) would damage rural character.

- 8.21 The proposed dwelling as originally submitted was a one and a half storey detached dwelling. The dwelling proposed an overall ridge height of approximately 7.5m with a frontage of approximately 14.3m and a gable depth of approximately 9m. The dwelling was proposed to front onto Curragh Road and be located on a similar footprint to the structure to be replaced, nonetheless sited slightly closer to the road. The detached garage was proposed to the east of the dwelling and measured approximately 5.1m by 6.8m with an overall ridge height of approximately 5.9m.
- 8.22 The scale/design of the originally proposed dwelling for a 7.5m high dwelling, in addition to the extension of the curtilage would have resulted in a visual impact significantly greater than the existing building to be replaced which is a modest single storey structure. The original proposal was considered to fail to meet CTY3 and CTY 13 criteria (e) in that the design of the building is inappropriate for the site and the overall size of the new dwelling would have a visual impact significantly greater than the existing building.
- 8.23 Amended elevations and floor plans were submitted via email on 15.08.2022. The amended scheme has reduced the dimensions of the dwelling, with an overall ridge height of approximately 6.8m, a frontage of approximately 13.3m and a gable depth of approximately 8.7m. The garage has been reduced to single storey.
- 8.24 The proposed dwelling will be sited within the existing established curtilage. However, the curtilage will extend further to the east to allow space for the proposed garage and proposed new access point. This will involve the removal of the existing high hedgerow to the existing eastern boundary of the dwelling.
- 8.25 The existing mature high hedgerow to the west and south west of no. 80 and the existing trees/vegetation to the southern roadside

boundary of no. 80 currently ensures the site is afforded a high degree of integration on approach from the west.

- 8.26 To the southern roadside boundary of the site a new hawthorn hedgerow is proposed due to the removal of vegetation for splays. New planting/boundary treatment will be required along the new defined eastern boundary of the site. The removal of the existing hedgerow to the east and the extension of the site curtilage to the east will open up the site and views on approach from the east. The amended design and scale of the proposed dwelling is considered to be acceptable on this site and is considered not to have a significantly greater visual impact than the existing structure notwithstanding the fact that the structure to be replaced is not eligible for replacement and the principle of development is not acceptable.

Habitats Regulation Assessment

- 8.27 The potential impact 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.

Access

- 8.28 PPS 3, Policy AMP 2, Access to Public Roads notes 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: a) such access will not prejudice road safety or significantly inconvenience the flow of traffic; and b) the proposal does not conflict with Policy AMP 3 Access to Protected Routes.
- 8.29 The application proposes the creation of a new access onto the Curragh Road. DFI roads were consulted on the application and in a response dated 04.12.20 raised no objections.

9 CONCLUSION

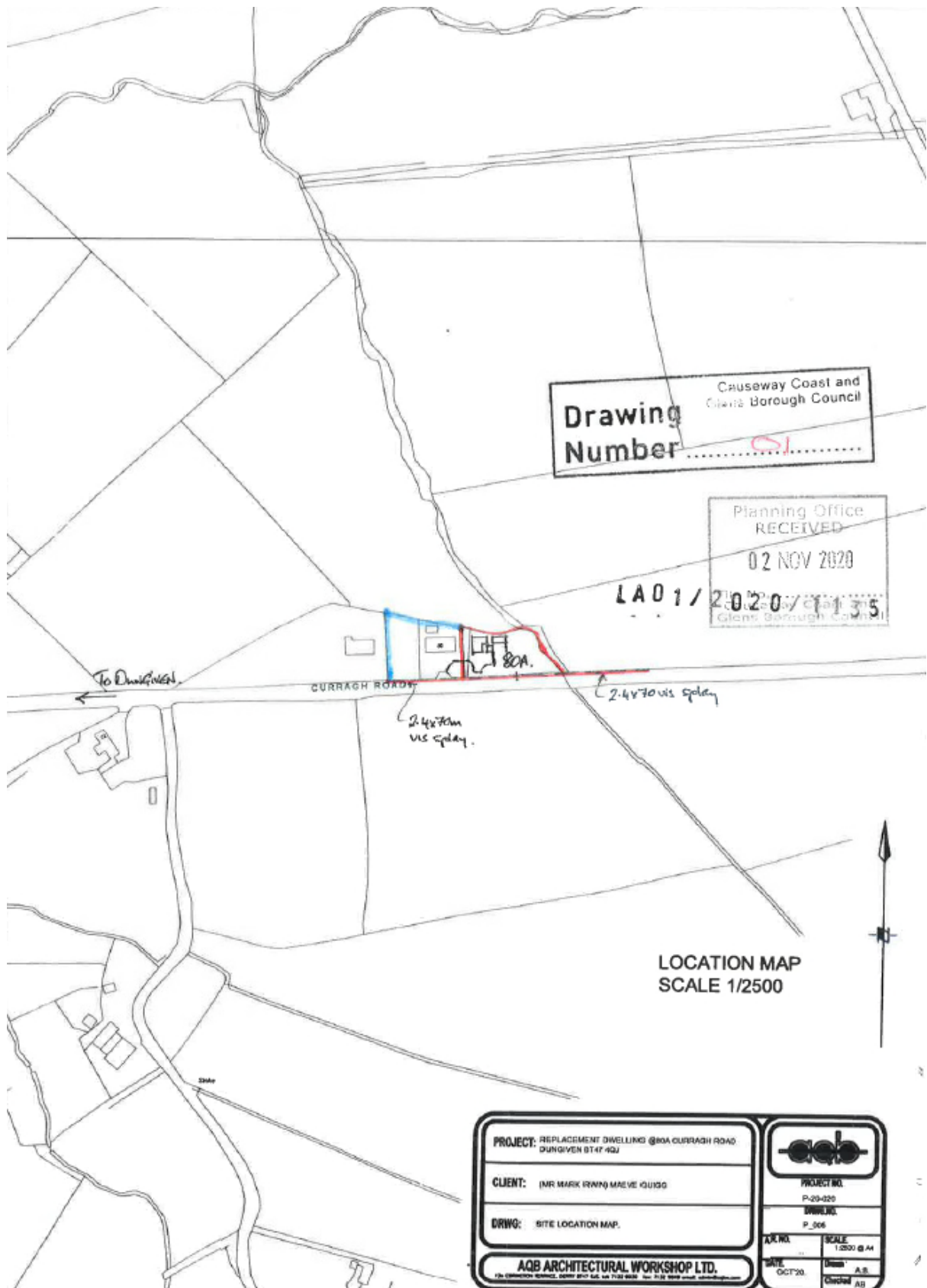
- 9.1 The proposal is considered unacceptable in this location having regard to the Northern Area Plan 2016 and other material

considerations including the Planning Policy Statement 21. The structure subject of the replacement is not considered to be of permanent construction and is therefore not eligible for replacement under policy CTY3. The applicant has not provided satisfactory long term evidence that a new dwelling is a necessary response to the particular circumstances of the case and that genuine hardship would be caused if planning permission were refused and it has not been demonstrated that there are no alternative solutions to meet the particular circumstances of this case. No overriding reasons have been forthcoming as to why the development is essential and could not be located within a settlement and the principle of development is therefore not acceptable. Refusal is recommended.

10 Reasons for Refusal

1. The proposal is contrary to Planning Policy Statement 21, Sustainable Development in the Countryside, Policy CTY 1 in that there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.
2. The proposal is contrary to The Strategic Planning Policy Statement, Para 6.73 and Planning Policy Statement 21, Sustainable development in the Countryside, Policy CTY 3 in that the building is of a temporary construction and is not eligible for replacement.
3. The proposal is contrary to Policy CTY6 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the applicant has not provided satisfactory long term evidence that a new dwelling is a necessary response to the particular circumstances of the case and that genuine hardship would be caused if planning permission were refused and it has not been demonstrated that there are no alternative solutions to meet the particular circumstances of this case.

Site location Map



Annex 1

Sent: 18 March 2022 10:39
To: Planning <Planning@causewaycoastandglens.gov.uk>
Subject: LA01/2020/1135

Re: LA01/2020/1135
Replacement dwelling at Curragh Road, Dungiven

Good morning,

I would like for the above planning application to be deferred to the Planning Committee for decision.

The current dwelling is a timber structure built on site 25 -30 years ago. The agent does not agree with planners that the structure should be treated like a caravan and I do agree with him. It is my understanding that the agent has cited a number of precedent cases, including a large number of tin huts replace dwellings along Seacoast Road, Downhill.

Kind Regards,

Councillor Orla Beattie
Sent from my iPad

Sent: 16 March 2022 23:40
To: Planning <Planning@causewaycoastandglens.gov.uk>
Subject: Ref: LA01/2020/1135 Curragh Road, Dungiven.

Hello planning,

May I request that this application be referred to the planning committee please. The application is on this weeks list.

We believe the application does meet CTY3 replacement dwelling. The building is a timber structure with foundations and drainage. It is not a caravan type structure. It has been lived in for at least 25 years. The applicant is simply looking to provide a modern home for his family and feels there are precedent cases specifically along Seacoast Road at Downhill where lesser tin hut structures have been replaced with dwellings.

Alderman Alan ROBINSON
Alderman Mark Fielding.

Sent from my iPad

Addendum

LA01/2020/1135/F

1.0 Update

- 1.1 The planning committee report refers to 3 planning appeals at paragraph 8.11 and 8.12 which include PAC 2013/A0047, PAC 2013/0074 and PAC 2018/A0172. The appeal decisions are provided in the following pages as the PAC website is currently unavailable.



Appeal Decision

Park House
87/91 Great Victoria Street
BELFAST
BT2 7AG
T: 028 9024 4710
F: 028 9031 2536
E: info@pacni.gov.uk

Appeal Reference:	2013/A0047
Appeal by:	Terrence Murphy against the refusal of outline planning permission.
Development:	Replacement of existing mobile home with new dwelling house.
Location:	No 4 Milltown Road, Lislea, Camlough, Newry.
Application Reference:	P/2012/0444/O
Procedure:	Informal Hearing on 17 October 2013.
Decision by:	Commissioner Pauline Boomer, dated 15 November 2013.

Decision

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

Preliminary Matter

2. The Department withdrew its 3rd reason for refusal relating to conflict with Policy DES2 at the Informal Hearing.

Reasons

3. The main issues in this appeal are:
 - whether the existing mobile home represents a replacement opportunity in accordance with Policy CTY3;
 - its potential impact on the adjacent Listed Building; and
 - its effect on the rural character of the area.
4. Policy CTY1 of Planning Policy Statement 21 - Sustainable Development in the Countryside (PPS21) states that there are a range of types of development which are considered to be acceptable in principle in the countryside and that will contribute to the aims of sustainable development. It goes on to state that planning permission will be granted for an individual dwelling house in the countryside in six cases. One of these is a replacement dwelling in accordance with Policy CTY3. It follows that if the development complies with Policy CTY3, it will comply with Policy CTY1 of PPS21.

5. Policy CTY3 states that planning permission will be granted for a replacement dwelling where the building to be replaced exhibits the essential characteristics of a dwelling. It goes on to say that buildings of a temporary construction will not be eligible for replacement under this policy. The appeal proposal seeks the replacement of an existing mobile home located on the eastern side of Milltown Road, within the curtilage of No. 4. The appellant seeks the replacement of the existing mobile home with a single storey dwelling. He indicated that the mobile home was transported by lorry in one piece approximately twenty years ago and since then has remained in its current position, abutting the north-western site boundary, supported on piles of concrete blocks. As it shares all of its services with No 4, the utility bills submitted dated September 2012 cannot confirm the occupation of the mobile home as an independent unit. The rates bill dated March 2012 presented refers to a house (caravan) as well as an outbuilding but offers no clarity about how long the mobile home has been in place and over what period it has been occupied. Similarly, a bank letter dated October 2012 addressed to the appellant at No 4 Milltown Road only clarifies that the appellant was occupying the mobile home at that time. Whilst they collectively indicate a degree of permanency of habitation, the test in Policy CTY3 is whether or not there is a building to be replaced and if it exhibits the essential characteristics of a dwelling. The appeal proposal involves not a building but a mobile home which is of temporary construction and does not exhibit the essential characteristics of a dwelling. I therefore do not consider that this mobile home is a replacement opportunity which satisfies the requirements of Policy CTY3.
6. The appellant and local representatives argued that a precedent has been set for replacement of caravans and mobile homes in the Newry and Mourne District and referred to two cases which they considered were comparable. The replacement of a permanent farmhouse at 47 Chapel Road, Meigh with a log cabin is not directly comparable as the original building met the initial test for replacement as set out in Policy CTY3, regardless of the design of the new building. It would appear that approval was granted under P/2007/A0236 for the replacement of a mobile home with a dwelling at No.58 Corcreaghan Road Kilkeel but neither party were able to explain the particular circumstances of this case which was assessed against different policies in the Planning Strategy for Rural Northern Ireland (PSRNI). Whilst it is argued that the appellant should not be penalised for the change in policy with the introduction of PPS21 given that the mobile home has been occupied for many years or penalised for the listing of the ceili house following the 2001 approval of its replacement with a dwelling, the appeal proposal now has to be assessed against the relevant planning policies in PPS21.
7. The mobile home does not qualify as a replacement under Policy CTY3 and the appeal proposal does not fall within one of the other types of housing development that are acceptable in principle in the countryside under Policy CTY1. Whilst the appellant indicated at the Informal Hearing that he needed to live on the appeal site to pursue his farming activities, for security reasons and to provide a better standard of living accommodation, he presented no evidence to support these claims. In this evidential context, I am not persuaded that there are overriding reasons why the development is essential and could not be located in a

settlement. I conclude that there is no policy support for the proposal in PPS21 and the Department's first reason for refusal based on Policies CTY1 and CTY3 is sustained.

8. The appeal site incorporates the curtilage of No.4, a part single storey/part one and a half storey listed building last operating as a bar/ceili house and the adjoining field to the north-east. Within the curtilage of No4, in addition to the mobile home, there is a detached mono-pitched outbuilding centrally positioned with approval recently granted for a single storey tourist cottage in the most southerly section. The appeal site also includes the adjoining field of 0.67ha which extends to the northeast, abutting the small roadside dwelling at No.2. I note that a planning application for a large agricultural shed is currently being considered on this plot by the Department, within which lie a number of containers and wooden structures. Appraisal of the complex planning history of the ceili house shows that the appellant proposes to add a sizeable linear extension at the northern end of the ceili house which would effectively block off access to the adjacent field. This was acknowledged by the appellant who recognised that if the principle of a replacement of the mobile home were established, the new dwelling would have to be positioned within the restricted curtilage of No.4. In light of the approved tourist cottage in the southern corner of that plot, the only remaining possible siting would be as shown in the indicative site layout plan, positioned directly in front of the Listed building. It is this siting on which this appeal is based.
9. The 2nd reason for refusal refers to Policy CTY14 which states that planning permission will be granted for a building in the countryside where it does not cause a detrimental change to or further erode the rural character of the area,. The Department considers that, as the mobile home does not meet replacement status, the introduction of an additional dwelling on the site when read with existing and approved buildings would result in a suburban style build up of development which would erode rural character. The Department only referred to critical views from the entrance to the appeal site from where filtered views of the ceili house and the mobile home are available. Given the mature belt of woodland which extends south of the existing entrance and separates the curtilage of No.4 from the public road, I am satisfied a dwelling positioned as indicated on the site layout plan would not be visible from the public road or from the entrance to the site. I am not persuaded that the proposed dwelling would be viewed from that critical view identified with the existing and approved buildings or would read as a suburban style build up, eroding rural character. The Department have not sustained the 2nd reason for refusal.
10. The 4th reason for refusal considers the impact of the appeal proposal on the setting of the listed building, the ceili house. The appellant indicated that he proposed to erect a modest single storey dwelling of similar size, massing and design as the tourist cottage recently approved. Whilst NIEA Built Heritage have no concerns about the detailed design which could be controlled by condition, they considered that the juxtaposition of the dwelling now proposed and the listed building, separated only by 5 m would have a detrimental impact on the listed building.

11. Policy BH11 of Planning Policy Statement 6: Planning, Archaeology and the Built Heritage (PPS6) states that the Department will not normally permit development which would adversely affect the setting of a listed building. Paragraph 6.28 in the Justification and Amplification text indicates that the setting of a listed building is often an essential part of its character. Though "setting" is not defined, I accept the NIEA Built Heritage's interpretation that it relates not just to the visual setting of the listed building but also to its historical and functional understanding. Historically there were no buildings in front of the ceili house as all existing buildings presented a linear form across the site and I agree that it is important that the listed building remain the dominant building within the curtilage. Even if the footprint were restricted, I consider that the introduction of an additional building separated only by 5m would detract from the setting of the listed building and would be detrimental to its special character. This was acknowledged by the appellant who recognised the need to relocate. However given the other approvals granted within the curtilage and the constraints on access, no alternative positions are available within the appeal site. In this context, I find that the appeal proposal offends Policy BH11 and the 4th reason for refusal is therefore sustained.
12. Concerns raised about loss of light by the owner of No 2 Milltown Road are unfounded given the restriction on siting to within the curtilage of No.4. As no sightlines were indicated on the site layout plan, I am satisfied that the proposed development did not encroach on adjoining lands and notice was not required to be served on adjoining landowners.

This decision relates to the following drawings

1:2500 site location map and 1:500 site layout plan date stamped received by the Department on 28 August 2012.

COMMISSIONER PAULINE BOOMER

Appeal Reference:	2013/A0074
Appeal by:	Mr Andrew Walker against the refusal of full planning permission.
Development:	One and a half storey replacement dwelling in lieu of prefabricated dwelling to improve standards of human habitation.
Location:	30A Ballygowan Road, Hillsborough.
Application Reference:	S/2011/0007/F
Procedure:	Written Representations with Commissioner's Site Visit on 17 October 2013.
Decision by:	Commissioner Mark Watson, dated 29 October 2013.

Decision

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

Reasoning

2. The main issue in this appeal is the acceptability in principle of the development. The site lies in the countryside and Planning Policy Statement 21 – Sustainable Development in the Countryside (PPS21) applies to the development. Policy CTY1 of PPS21 states that there are a range of types of development which are considered to be acceptable in principle in the countryside and that will contribute to the aims of sustainable development. It goes on to state that planning permission will be granted for an individual dwelling house in the countryside in six cases. One of these is a replacement dwelling in accordance with Policy CTY3. It follows that if the development complies with Policy CTY3 it will comply with Policy CTY1 of PPS21.
3. The site comprises a triangular piece of land accessed via a laneway that runs north-east off the Ballygowan Road. The structure to be replaced is a flat roofed unit finished in metal sheeting, coloured white and green. It measures approximately 12m x 3.2m and is mounted on a block built plinth, which has been rendered. The draw bar / towing hitch has been cut off from the chassis, although the end can still be seen through the front side of the plinth. There is an oil tank and boiler situated to the north of the structure, along with a wooden shed and an enclosed area for a septic tank. The northern and eastern boundaries of the site are defined by mature hedge and a number of mature trees, whilst the south-western boundary is defined by a line of mature conifers with a low wooden fence.

4. According to the Appellant the structure has been in place for 24 years. Following submission of evidence including rates payments and the payment of housing benefit from the NI Housing Executive, the Department accepted that although planning permission was never granted for the structure, it is immune from enforcement action.
5. Policy CTY3 of PPS21 states that planning permission will be granted for a replacement dwelling where the building to be replaced exhibits the essential characteristics of a dwelling and as a minimum all external structural walls are substantially intact. Policy CTY3 states that buildings of a temporary construction will not be eligible for replacement under the policy. The Department referred to the Caravans Act (NI) 2011, stating that the appeal structure fell within the definition of a caravan and was not eligible for replacement under the policy.
6. The Appellant considered that the reference in CTY3 to buildings of a temporary construction being ineligible applied only in respect of those designed and used for agricultural purposes. I do not agree as the construction of the sentence makes clear that both buildings designed and used for agricultural purposes *and* buildings of a temporary construction (my emphasis) will not be eligible for replacement under CTY3. The reference to sheds and stores in the sentence is only in respect of examples of agricultural buildings. Policy CTY3 contains no reference to caravans. Taking PPS21 as a whole there is provision for residential caravans and mobile homes under Policy CTY9. The policies contained within PPS21 make distinction between dwellings and caravans. The wording of CTY3 in relation to the building to be replaced exhibiting the essential characteristics of a dwelling and as a minimum having all the external structural walls intact suggests that to qualify, the structure must be a building with conventionally built structural walls rather than be comprised of prefabricated shell structures such as caravans. I am reinforced in this by the distinction throughout PPS21 between dwellings and caravans / mobile homes. Given this distinction I am not persuaded that a caravan, which for the purposes of the policy is of temporary construction, can benefit from the policy provisions of CTY3, notwithstanding how long it has occupied a site or its means of attachment to the ground.
7. Having regard to the design and size of the appeal structure to be replaced, despite the more recent addition of a block built plinth in July 2011, I agree that it falls within the definition of a caravan as contained in the Caravans Act. The caravan does not have external structural walls as conventionally constructed buildings do but rather is composed of a shell-like structure. I note that the Department observed that the appeal structure still had wheels on its chassis at a site inspection in June 2011, prior to the erection of the block plinth. Given the differing means of construction and design between conventional buildings and caravans, I am not persuaded that a caravan can exhibit the essential characteristics of a dwelling house. Despite the length of time the appeal structure has occupied the site, the fact it is still habitable, the existing provision of services, means of attachment to the ground and the fact it has a postal address, I find that it is not eligible for replacement under Policy CTY3.
8. The Appellant referred to appeal decision 2007/A0595 at Moira Road, Glenavy which was approved under the draft version of PPS21. Notwithstanding that the text of the relevant part of CTY3 did not change between dPPS21 and the extant version, the heading "Other Buildings" was removed, the position of the

relevant paragraph changed and consequently the structure of the policy was altered. The removal of that heading and restructuring of the policy widened the scope of the reference to the ineligibility for replacement of buildings designed and used for agricultural purposes and buildings of a temporary construction to all such constructed buildings, not just those that were non-dwellings. In appeal 2007/A0595 the structure to be replaced was a pre-fabricated chalet that had been assembled on site and had rendered walls rising from a block work skirt. The Commissioner was satisfied that the structure to be replaced was a dwelling, that it exhibited the essential characteristics of a dwelling house and that it had external structural walls that were intact. It was also noted that the structure to be replaced could not be moved from the site in one piece. Whilst the appeal structure before me is linked to services which would require some dismantlement, I do not agree that this would be a particularly onerous task and I consider that it could still be removed from the site in one piece. Whilst the structure in 2007/A0595 was immune from enforcement action, had full service provision and sat upon a block plinth, I find that it is not comparable to the appeal structure before me. That decision would not justify approval of the development before me.

9. The Appellant referred to an enforcement appeal case in Bedfordshire in which the Inspector found that the development that had replaced an existing caravan amounted to operational development due to its size, permanence and physical attachment to the ground. Notwithstanding that the circumstances and policy context in that decision differed from that of the appeal proposal, the issue at hand is not whether the in-situ structure amounts to operational development with a high degree of permanence. Rather it is whether prevailing planning policy allows for replacement of the appeal structure with a permanent dwelling, which despite the length of time it has occupied the site, is a caravan of temporary construction. The referenced decision would not justify the granting of planning permission for the proposed development before me.
10. I find that the development does not comply with Policy CTY3 of PPS21. Whilst it was stated that the replacement of the structure with a permanent dwelling would yield significant environmental benefits I am not persuaded that the replacement of a caravan possessing a very limited physical and visual presence in the landscape with a one-and-a-half storey dwelling would yield such benefits. Whilst a new dwelling may be more energy efficient and provide a higher standard of habitation than the existing structure, this would not justify approval of development that is contrary to policy. The fact the existing structure could remain there indefinitely, the strong boundary vegetation and lack of public views of the site would not justify the replacement of the structure with a new dwelling. I am not persuaded that there are overriding reasons why the proposed development is essential. I find that the development does not comply with Policy CTY1 of PPS21. The Department's reason for refusal has been sustained and is determining. The appeal must fail.

This decision relates to the following drawings submitted with the application and stamped refused by the Department on 23 January 2013:

DRAWING NUMBER	TITLE	SCALE	DATE
01	Proposed Planning Scheme	1:2500, 1:200, 1:100 & 1:50	Dec 2010
02	Proposed Road Geometry	1:200	April 2011

COMMISSIONER MARK WATSON

Appeal Reference: 2018/A0172
Appeal by: Leah Chambers
Appeal against: Refusal of full Planning Permission
Proposed Development: Replacement Dwelling.
Location: 14a Stewarts Road Annalong
Planning Authority: Newry Mourne and Down District Council
Application Reference: LA07/2018/0921/F
Procedure: Written Representations
Decision by: Commissioner Helen Fitzsimons on 29th April 2019

Decision

1. The appeal is dismissed.

Reasons

2. The main issues in this appeal are whether the proposed development is acceptable in principle in the countryside, and whether it would have adverse impact on the on the visual amenities of the countryside and its Area of Outstanding Natural Beauty (AONB) location.
3. The appeal site is located outside any settlement limit and lies in the countryside as designated by Banbridge, Newry and Mourne Area Plan 2015 (BNMAP) the local development plan which operates for the area. The BNMAP offers no specific policy or guidance pertinent to the proposed development. The Strategic Planning Policy Statement for Northern Ireland (SPPS) retains a number of Planning Policy Statements (PPSs) one of which is PPS 21 'Sustainable Development in the Countryside'. The appeal site lies in the Mourne Area of Outstanding Beauty (AONB).
4. Policy CTY 1 of PPS 21 states that 'there are 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.' It continues 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'. One of these is a replacement dwelling in accordance with Policy CTY 3 of the PPS.
5. Policy CTY 3 of PPS 21 says that planning permission will be granted for a replacement dwelling where the building to be replaced exhibits the essential characteristics of a dwelling and as a minimum all external structural walls are substantially intact. It adds that buildings designed and used for agricultural

purposes, such as sheds or stores and buildings of a temporary construction will not however be eligible for replacement under this policy. There was no dispute that the structure to be replaced is currently used as a dwelling. The Council's objections are grounded in the policy requirement that the dwelling to be replaced should not be of temporary construction.

6. The subject building is a modest single storey prefabricated dwelling located behind No 14 Stewarts Road. Due to its siting views of it are limited to just across the frontage of No 14 Stewarts Road and for a short distance when travelling from the north west. The appellant told me that it was framed together on site with in situ block work, render, electricity, plumbing, heating and drainage. Internally it provides a kitchen, living room bathroom, utility room and two bedrooms. It is accessed from the driveway of No 14 Stewarts Road. Although it sits within the grounds of No 14 Stewarts Road it has its own small curtilage with a front garden area separated from No 14 Stewarts Road by fencing.
7. The word 'buildings' in Policy CTY 3 indicates to me that the paragraph is meant to apply to operational development as well as portable structures such as caravans, portacabins or mobile homes. I accept that in this case operational development was required to erect the building. It was created by connecting prefabricated sections. A platform on which to anchor it was constructed. However this platform does not appear as an integral part of the building. The thinly rendered external walls, roof covering and general appearance of the structure are similar to those of temporary buildings. It was purchased some 17-18 years ago and I assume that it was constructed on site around the same time. At my site visit I noted some deterioration on the lower part of the front elevation that I would not expect to see on a permanent building of a similar age. Taking all of these factors into account I consider that the building is temporary in nature and it is not eligible for replacement under Policy CTY3. The Council's objections to the proposal on that requirement of Policy CTY 3 of PPS 21 are sustained.
8. Policy CTY 3 of PPS 21 also says that a replacement dwelling will only be permitted where all of five stated criteria are met. The Council raised objections to the proposal under the first criteria that the proposed replacement dwelling should be sited within the curtilage of the existing building unless either (a) the curtilage is so restricted that it could not reasonably accommodate a modest sized dwelling or (b) it can be shown that an alternative position nearby would result in demonstrable landscape, heritage, access or amenity benefits and criterion two that the overall size of the new dwelling should allow it to integrate into the surrounding landscape and would not have a visual impact greater than the existing building.
9. The site of the proposed new dwelling is within the curtilage of No 14 Stewarts and has full frontage to the road. I was given no arguments that the existing curtilage is so restricted that it could not reasonable accommodate a modest sized dwelling. The first criterion of this part of Policy CTY 3 of PPS 21 is not met.
10. Although the size of the new building would allow it to integrate into the surrounding landscape, given its roadside location, there would be more extensive views of it when travelling along Stewarts Road in both directions and it would

have a greater visual impact on the landscape than the building to be replaced. The creation of an independent driveway to the new dwelling which would increase safety for children playing behind No 14 Stewarts Road is not an access benefit that is persuasive in this appeal. I have no evidence of loss of amenity to the residents of No 14 Stewarts Road as a result of the current living arrangements between them and the occupier of No 14a. Arguments that it would screen the existing stables to the west are not persuasive as there is nothing in policy to allow such a 'trade off'. In any event the Council's evidence suggests that the stables are under enforcement action and in the absence of a Certificate of Lawfulness I cannot take them into account. It has not been demonstrated that the proposed site for the new dwelling would result in landscape, heritage, access or amenity benefits. The second criterion of Policy CTY 3 would not be met. As the proposed development fails three stated elements of Policy CTY 3 of PPS 21 it is not acceptable in principle in the countryside and the Council has sustained its first reason for refusal.

11. Policy CTY 8 'Ribbon Development' of PPS 21 states that planning permission will be refused for a building which creates or adds to a ribbon of development. Paragraph 5.33 of the policy says that a ribbon does not necessarily have to be served by individual accesses nor have a continuous or uniform building line. Buildings sited back, staggered or at angles and with gaps between them can still represent ribbon development. A dwelling on the appeal site would be seen with No 14 Stewarts Road and the dwelling immediately to the south east. Notwithstanding that there would be a gap between them the buildings would be viewed as a ribbon of development. This would be detrimental to the amenities of the countryside and contrary to policy. The Council has sustained its second reason for refusal based on Policy CTY 8 of PPS 21.
12. Policy CTY 13 'Integration and design of buildings in the Countryside' states that planning permission will be granted for a building in the countryside where it can be visually integrated into the surrounding landscape and it is of an appropriate design. A new building will be unacceptable in seven stated circumstances. The Council raised objections its third reason for refusal under (a) it is a prominent feature in the landscape (b) the site lacks long established natural boundaries or is unable to provide a suitable degree of enclosure for the building to integrate into the landscape and (c) it relies primarily on the use of new landscaping for integration. I do not consider that the modest new dwelling would be a prominent feature in the landscape. Dry stone walls typify boundary treatment of both fields and curtilages in this area and the proposed boundary treatments would be in keeping with this. A condition requiring a new dry stone wall to define the curtilage of the new building would allow it to integrate in a similar fashion to other dwellings in the area. Criteria (a) (b) and (c) of Policy CTY 13 of PPS 21 would be met . The Council has not sustained its third reason for refusal based on Policy CTY 13 of PPS 21.
13. Policy CTY 14 of PPS 21 'Rural Character' also says that a new building will be unacceptable where amongst other circumstances (a) it is unduly prominent in the landscape and (d) it creates or adds to a ribbon of development (see Policy CTY 8) .I have already concluded under Policy CTY 13 that the proposed development would not be an unduly prominent feature in the landscape it would not offend this

requirement of Policy CTY 14. However, as I have also concluded that the proposed new dwelling would create a ribbon of development criterion (d) of Policy CTY 14 would be offended, and the Council has sustained its fourth reason for refusal based on Policy CTY 14 for that reason.

14. Policy NH 6 'Areas of Outstanding Natural Beauty' of Planning Policy Statement 2 'Natural Heritage' (PPS 2) says planning permission for new development within an AONB will only be granted where it is of an appropriate design, size and scale for the locality and where all of three stated criteria are met. One of these is a) the siting and scale of the proposal is sympathetic to the special character of the AONB in general and of the particular locality and it is this criterion that the Council has based its objection upon. This part of the Mourmes AONB is typified by houses of varying sizes, heights and designs. From the appeal site a number of other houses are highly visible in the landscape. A modest dwelling on the appeal would not be unsympathetic to the character of this part of the AONB and Policy NH 6 of PPS 21 would not be offended. The Council has not sustained its second reason for refusal.
15. The appellant referred me to other dwellings in the area which she considers comparable to and justification for her proposal. Those decisions were taken under a different jurisdiction with different planning policy in place and for those reasons are distinguishable from this appeal.

This decision is based on the 1:2500 scale site location plan and the following drawings numbered by the Council Drawing No 02; Drawing No 03; Drawing No 04; and Drawing No 05 (Rev 1)

COMMISSIONER HELEN FITZSIMONS

Addendum 2

LA01/2020/1135/F

1.0 Update

- 1.1 Application LA01/2020/1135/F was brought before the August Planning Committee with a recommendation to refuse. Committee deferred the application to facilitate a site visit. The site visit took place on 26th September 2022.
- 1.2 The application was brought back before Committee on 28th September 2022 with a recommendation to refuse and Committee deferred the application to allow for the submission of further information. The Planning Department contacted the agent via email on 29th September 2022 seeking all further information to be submitted by 13th October 2022.
- 1.3 The agent submitted the following information via email on the 26.09.22:
 - Medical letter dated 04.08.22
 - Proposed elevations, floor plans, site plan, garage plan.
 - Modular design solutions document
 - Letter dated 17.05.21
 - Letter dated 10.09.21
 - Letter dated 30.03.22
 - Letter dated 01.04.22
 - Letter dated 14.04.22
 - Supplementary Report dated 30.03.22
- 1.5 A further email was submitted on 28.09.22 which noted:
 - Applicant currently lives at 80a Curragh Road along with her daughter, daughter's husband and their family.
 - The structure at 80a was constructed back in 1997.
 - The applicant's sister lives at no.80 Curragh Road who also assists as applicant's carer.
 - The applicant suffers from ill health.
 - Attached to the email was a cover letter dated 28.10.20 which was originally submitted with the application confirming some of the details above.

- 1.6 A letter/written statement was submitted via email on the 30.09.22 (dated 29.09.22) from the agent. The letter states that the existing dwelling at 80a is in a poor condition, does not meet specific standards and is in need of improvement, the cost of which would exceed the cost of a new dwelling. The correspondence states who provides care to the applicant, namely the applicants daughter and sister. The proposed level of accommodation is explained and that it will greatly enhance living standards. The correspondence states that there are no alternatives available on this site.
- 1.7 The specific correspondence submitted on 28th and 30th September can be provided on request to members.

2.0 Consideration

- 2.1 In response to the submission dated the 26.09.2022, the Planning Department would comment as follows;
- Medical letter dated 04.08.22 has already been submitted and is considered in para 8.14 – 8.15 of the planning committee report.
 - Proposed elevations, floor plans, site plan, garage plan has already been submitted and uploaded on 15.08.22 and is considered in para 8.23 and 8.26 of the planning committee report.
 - Modular design solutions document has already been submitted and uploaded as Doc 05 on the 06.06.22 and is considered in para 8.9 of the planning committee report.
 - Letter dated 17.05.21 has already been submitted and uploaded on the 19.05.21 and is considered in para 8.7 – 8.8 of the planning committee report.
 - Letter dated 10.09.21 has already been submitted and uploaded as Doc 02 on the 16.09.21 and has been considered in the assessment of the application.
 - Letter dated 30.03.22 has already been submitted and uploaded as Doc 03 on the 01.04.22 (written version only with no photos) and has been considered in para 8.7 – 8.8 of the planning committee report.
 - Letter dated 01.04.22 was a cover letter submitted with Doc 03 uploaded on the 01.04.22 and is considered in the Committee report.
 - Letter dated 14.04.22 was a cover letter submitted with Doc 04 Sketch proposal, which was uploaded on the 26.04.22 and has been considered during the assessment, particularly para 8.23 and 8.26 of the planning committee report.

- Supplementary Report dated 30.03.22 has already been submitted and uploaded as Doc 03 on the 01.04.22 (written version including photos) and has been considered in para 8.7 – 8.8 of the planning committee report.
- 2.2 In response to the submissions dated 28.09.22 and 30.09.22, the Planning Department would comment as follows.
- 2.3 Policy CTY 6 – Personal and Domestic Circumstances notes Planning permission will be granted for a dwelling in the countryside for the long term needs of the applicant, where there are compelling, and site specific reasons for this related to the applicant’s personal or domestic circumstances and provided the following criteria are met:
- (a) the applicant can provide satisfactory evidence that a new dwelling is a necessary response to the particular circumstances of the case and that genuine hardship would be caused if planning permission were refused; and
 - (b) there are no alternative solutions to meet the particular circumstances of the case, such as: an extension or annex attached to the existing dwelling; the conversion or reuse of another building within the curtilage of the property; or the use of a temporary mobile home for a limited period to deal with immediate short term circumstances.
- All permissions granted under this policy will be subject to a condition restricting the occupation of the dwelling to a named individual and their dependents.
- 2.4 The Planning Department welcomes the clarification as to the occupants of no 80 and 80a Curragh Road and who will reside in the new property proposed. The information provided states that the applicants daughter is the applicants full time carer and that the applicants sister is also a registered carer for the applicant. The information also states that evidence of the registered carer is to follow however to date no such information has been supplied.
- 2.5 The information highlights the existing mobile home on site does not meet specific standards and is restricted in size and is in need of repair. This information refers to the inadequacies of the existing temporary accommodation. The information presented, when reviewed along with the previously submitted medical letter, does not demonstrate the need for certain physical apparatus or standards and does not demonstrate a level of care required by

the applicant that is compelling and site specific to merit the need for a dwelling in this location. While the planning department notes the deterioration of the existing temporary structure this does not merit a dwelling under CTY6. No demonstration of a site specific reason for the need for a dwelling in this location has been forthcoming. It has not been demonstrated that a genuine hardship would result if a dwelling was refused.

- 2.6 There has been no consideration of any alternative solutions as per criteria (b) of CTY6. The evidence advises the applicants daughter and sister provide combined support to the applicant. Alternative accommodation could be provided by alteration of the existing dwelling at 80 Curragh Road given the care provided by the applicant's sister who resides at that address. The information provided states that the applicants daughter is the registered carer however to date no evidence has been forthcoming in regard to this. There has been no consideration as to the site specific need for a dwelling at this location. The site is in close proximity to the development limit of Dungiven and there has been no consideration as to why a dwelling within the settlement limit could not be acquired to provide the required amount of accommodation.

3.0 Recommendation

- 3.1 That the committee note the contents of this Addendum and agree with the recommendation to refuse the application in accordance with paragraph 1.1 of the planning committee report.

Addendum 3

LA01/2020/1135/F

1.0 Update

1.1 The agent submitted the following information via email on the 20.10.22:

- DFC letter dated 11.03.22 showing carers allowance claimed by the applicant's daughter at 80a Curragh Road.

1.2 The applicant/agent submitted additional information to the Council via email on 23.10.2022.

- The information contained a cover email which enclosed a written statement referred to as "A synopsis of why we believe we should be granted planning approval".

2.0 Consideration

2.1 In response to the submission dated the 20.10.22, the Planning Department would comment as follows;

2.3 The Planning Department acknowledges the evidence provided that the applicant's daughter is a registered carer. We would refer back to our consideration in the Addendum 2 report para 2.3 - 2.6 in which it is concluded that the information provided to date does not demonstrate a level of care required by the applicant that is compelling and site specific to merit the need for a dwelling in this location. It has not been demonstrated that a genuine hardship would result if a dwelling was refused.

2.1 In response to the submission dated the 23.10.22, the Planning Department would comment as follows;

2.2 The information contained within the submission has already been received via various submissions throughout the processing of the application and has been considered in the original committee report and the addenda.

- 2.3 The discussion of the appeal cases and precedent cases has already been submitted in Doc 03 and has been considered in para 8.7 – 8.8 of the planning committee report.
- 2.4 The information in relation to the existing structure and personal circumstances has already been submitted in emails dated 28.09.22 and letter/written statement submitted via email on the 30.09.22 and is considered in Addendum no.2.
- 2.5 The images provided at the end of the submission are extracted from Doc 05 Modular Design Solutions already submitted by the agent and have been considered in para 8.9 of the planning committee report.

3.0 Recommendation

- 3.1 That the committee note the contents of this Addendum and agree with the recommendation to refuse the application in accordance with paragraph 1.1 of the planning committee report.

Addendum 4

LA01/2020/1135/F

1.0 Update

1.1 Application LA01/2020/1135/F was brought before the August Planning Committee with a recommendation to refuse. Committee deferred the application to facilitate a site visit. The site visit took place on 26th September 2022. The application was brought back before Committee on 28th September 2022 with a recommendation to refuse and Committee deferred the application to allow for the submission of further information. The Planning Department contacted the agent via email on 29th September 2022 seeking all further information to be submitted by 13th October 2022. The application was returned to Committee in October 2022 and was deferred to allow the description of the proposal to be changed to reflect policy CTY6 and to allow the submission of additional information regarding Policy CTY6.

1.1 The agent submitted the following information;

- Supporting letter/written Statement dated 09.11.22 received on 14.11.22 details the health conditions of the applicant, details of applicant's carer, the limitations of existing structure and stated that alternatives have been considered.
- Medical letter from doctor received 13.12.22 (letter dated 4th August 2022 provided health conditions of applicant, has been received previously).
- Amended P1 Form with amended description of development (01.02.23) to read "Proposed replacement dwelling of 80a Curragh Road including personal site specific reason for replacement on site under CTY6".
- Letter dated 09.02.23 received via email on same date, noted that the replacement candidate would qualify for NIHE replacement grant but due to government funding drawbacks this is unavailable, an extension to the structure would receive planning permission

and building control would be approved for any extension/upgrading.

- Letter dated 09.02.23 received on 14.02.23 summaries and comments on the precedent examples highlighted by the agent in previous submissions and rebuts the case officer's reports in relation to these cases.

Please note that the above mentioned correspondence is available to view on the planning portal or has been circulated directly to members.

2.0 Consideration

- 2.1 The medical issues raised in the supporting statement and doctor's letter (submitted 14.11.22) have already been considered in the original committee report (paragraphs 8.14 and 8.15) and in the previous addenda reports.
- 2.2 The supporting statement (submitted 14.11.22) highlights how alternative options have been explored by the applicant's noting that an extension to the existing structure at 80a will have a greater visual impact than a new build and costs for extensions will incur VAT. The statement highlights that an extension to no. 80 is not viable as this is a third parties dwelling and that there are no properties in Dungiven that would satisfy the family's needs. In response, the Planning Department cannot make comment on the visual impact of any proposed future extension which would be subject to a separate application. The financial viability of the project is not a planning matter. The applicant advises that an extension to no 80 is not viable as it is owned by a third party however it is located within the blue lands as indicated on the submitted location map which indicates other lands outside the red line which are in the control of the applicant. While the Planning Department notes the assertion that there are no properties in Dungiven that would satisfy the family's needs, no evidence has been provided of any available properties which have been considered to support the claim that there are no appropriate properties in Dungiven.
- 2.3 The description as provided on the P1 form has been amended to "Proposed replacement dwelling of 80a Curragh Road including personal site specific reason for replacement on site under CTY6".

As considered in the original committee report and the other Addenda, the replacement candidate is of temporary construction and is not eligible for replacement under CTY 3. As advised within the original committee report and the subsequent addenda in particular Addendum 2 para 2.3 - 2.6, the information provided to date does not demonstrate a level of care required by the applicant that is compelling and site specific to merit the need for a dwelling in this location. It has not been demonstrated that a genuine hardship would result if a dwelling was refused.

- 2.4 The supporting letter (submitted 09.02.23) notes that; the dwelling would qualify for NIHE Replacement Grant (although not available), an extension to the structure would receive planning permission, and building control would be approved for any extension/upgrading. The Planning Department cannot comment if planning permission/building control would be forthcoming or if grants would be available for upgrading the structure. Each application is assessed on its own merits and would be subject to assessment.
- 2.5 Regarding the comments about the assessment of precedent cases as raised in the supporting letter (submitted 14.02.23) these cases have been considered and reviewed in the case officers planning committee report.
- 2.6 The replacement candidate subject of this application is of temporary construction and is not eligible for replacement under CTY 3. It has not been demonstrated that a new dwelling is a necessary response to the particular personal or domestic circumstances and that a genuine hardship would result if the application is refused. In addition, there has been no evidence provided to show that all alternative solutions have been explored to meet the particular circumstances of the case. The application is therefore contrary to CTY 6. There have been no overriding reasons provided as to why the development is essential at this location and could not be located in a settlement, the proposal is therefore contrary to CTY 1.

3.0 Recommendation

- 3.1 That the committee note the contents of this Addendum and agree with the recommendation to refuse the application in accordance with paragraph 1.1 of the planning committee report.

SITE VISIT REPORT: MONDAY 26th September 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

10.30am

LA01/2020/1135/F – Site at 80a Curragh Road, Dungiven

App Type: Full Application

Proposal: Proposed replacement dwelling

Present: Councillors McGurk, Nicholl and Scott, Official J McMath

Apologies: Ald Boyle and Cllr Hunter

Comments:

Viewed site from road frontage, then viewed structure from within site.

Officials commenced the meeting by showing the submitted location map, block plan, elevations and floor plans, explained the extent of the site, the boundaries and the siting and design of the proposed development. Officials explained that the proposal was a full application for the replacement of the structure at 80a with a dwelling and garage. Officials referred to CTY3 which states that buildings of a temporary construction will not be eligible for replacement. The structure to be replaced is a prefabricated structure and the walls, roof covering has the general appearance of a temporary building. As the structure to be replaced is of temporary construction it was not eligible for replacement under CTY3. Officials referred to the precedent cases raised by the applicant/agent and referred to the consideration in the committee report. Officials referred to the PAC decisions referred to by Officials in the Committee report and explained that the 2018 was especially comparable. Officials explained that further information was submitted in August 2022 which listed medical conditions but these were not explained and it had not been demonstrated that a new bungalow is a necessary response and that genuine hardship would result. The proposal is contrary to Policies CTY1, 6 and 8 of PPS21.

A question was asked about what criteria are considered to decide temporary. Officials explained that CTY3 does not give a definitive list but each is decided case by case basis taking into account the details of the structure such as walls, roof and appearance and PAC decisions.

J McMath 26/09/2022