

<b>Planning Committee Report – Agenda Item 5.23 LA01/2017/1263/LDP – 31 Moys Road, Limavady</b>	<b>28<sup>th</sup> February 2018</b>
<b>PLANNING COMMITTEE</b>	

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

**31 Moys Road, Limavady**

**LA01/2017/1263/LDP**

**Certificate of Lawful Development**

**28<sup>th</sup> February 2018**

<b><u>No:</u></b>	LA01/2017/1263/LDP	<b><u>Ward:</u></b> Benbradagh
<b><u>App Type:</u></b>	Certificate of Lawful Development Proposed	
<b><u>Address:</u></b>	31 Moys Road, Limavady BT49 9NQ	
<b><u>Proposal:</u></b>	Proposed erection of two storey dwelling with detached garage / store. A material start was made on site early 2011 when the buildings to be replaced were demolished and cleared from site. Dwelling house and accompanying outbuildings on site were removed and site cleared by July 2011. By April 2012 the site was completely cleared of all buildings and the foundations for a garage were laid. Material start was made on site in 2011 by clearing the site of all buildings. Garage founds were laid by April 2012. Development to which approval relates was begun by 10th June 2012 ( two years from date of RM Approval - B/2010/0065/RM.)	
<b><u>Con Area:</u></b>	N/A	<b><u>Valid Date:</u></b> 27 <sup>th</sup> September 2017
<b><u>Listed Building Grade:</u></b>	N/A	
<b><u>Agent:</u></b>	C McIlvar Ltd , Unit 7, Cookstown Enterprise Centre, Sandholes Road Cookstown, BT80 9LU	
<b><u>Applicant:</u></b>	Mr & Mrs P Hamilton, Box 658, Hamiota. Manitoba, Canada, ROM 0TO	
<b><u>Objections:</u></b>	<b>0</b>	<b><u>Petitions of Objection:</u></b> <b>0</b>
<b><u>Support:</u></b>	<b>0</b>	<b><u>Petitions of Support:</u></b> <b>0</b>

**Drawings and additional information are available to view by inspection at the Planning Department.**

## **1 RECOMMENDATION**

That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in section 9 and the consideration set out in section 8 and resolves to **REFUSE** to certify the proposed development as lawful for the reason set out in Section 10.

## **2 SITE LOCATION & DESCRIPTION & CHARACTER OF AREA**

The site is located on the Moys Road, Limavady within the rural area as designated in the Northern Area Plan 2016. The site has been cleared and the foundations for a garage have been put in place. The floor of a demolished shed is in the eastern corner of the site.

## **3 RELEVANT HISTORY**

- 3.1 B/2006/0526/O - Site for traditional two storey replacement dwelling with detached garage/store. Approved 20.04.2007
- 3.2 B/2010/0065/RM - Erection of traditional two storey rural dwelling with detached garage/store. Approved 10.06.10

## **4 THE APPLICATION**

The proposal is for the proposed completion of a dwelling and garage in accordance with plans approved under B/2010/0065/RM.

## **5 PUBLICITY & CONSULTATIONS**

As this application is for a Certificate of Lawfulness, there is no requirement to notify neighbours or to carry out consultations.

## **6 MATERIAL CONSIDERATIONS**

The material considerations in this instance are Planning Act (NI) 2011, Section 170 and the information provided by the applicant upon which they build their case.

## **7 RELEVANT POLICIES & GUIDANCE**

There are no policies or guidance to consider in this instance as the Council can only consider whether or not the proposal is lawful, ie. in this instance that the dwelling previously approved

can be completed without the need for further planning permission.

## **8 CONSIDERATIONS & ASSESSMENT**

8.1 The main considerations in the determination of this is Section 170 of the Planning Act (Northern Ireland) 2011 which states that,  
“(1) *If any person wishes to ascertain whether–*

*(a) any proposed use of buildings or other land; or  
(b) any operations proposed to be carried out in, on, over or under land, would be lawful, that person may make an application for the purpose to the appropriate council specifying the land and describing the use or operations in question.*

*(2) If, on an application under this section, the council is provided with information satisfying it that the use or operations described in the application would be lawful if instituted or begun at the time of the application, it must issue a certificate to that effect; and in any other case it shall refuse the application.*

In this case the applicant has submitted the application on the basis that development is considered to be lawful because it has an extant planning permission.

The Planning application B/2010/0065/RM for the erection of a traditional two storey rural dwelling with detached garage / store was approved on 10th June 2010. The earlier Planning application B/2006/0526/O for a site of traditional two storey rural dwelling with detached garage / store was approved on 18th April 2007. The proposed development is conditioned to be commenced within 2 years of the issue of application B/2010/0065/RM or within 5 years of the outline application D/2006/0526/O which ever is later.

Therefore, the approved development was to be commenced by 10th June 2012.

8.2 The Planning Act (Northern Ireland) 2011 : Section 63 (2) states that for the purposes of sections 61 and 62, development shall be taken to be begun on the earliest date on which any of the

following operations comprised in the development begins to be carried out.

(a) Where the development consists of or includes the erection of a building, any work of construction in the course of the erection of the building.

(b) Where the development consists of or includes alterations to a building, any work involved in the alterations;

(c) Where the development consists of or includes a change or use of any building or other land, that change of use;

(d) Where the development consists of or includes mining operations, any of those operations.

8.3 In this case the Council must consider:

(a) whether the works are in accordance with the relevant planning permission and

(b) whether the work carried out is material, in the sense that it is not de minimis, for example meaning something so minor as to have no legal consequence.

8.4 Aerial photography shows that the old dwelling and outbuilding where demolished by 24th July 2011. As the approved development was for a new dwelling and garage, for the work to have begun it must have comprised work of construction in the course of the erection of the buildings. This is supported by appeal 2017/E0010.

8.5 On this basis, the demolition of the dwelling and outbuilding to facilitate building the dwelling and garage with application reference B/2010/0065/RM would not have been sufficient to constitute a start.

8.6 The aerial photograph dated 19th April 2012 shows a garage foundation that is approximately 10-15 metres away from the approved position but still within the red line of site.

8.7 The garage foundations that were inspected during the site inspection and are on the aerial photograph are not in accordance with the relevant planning permission B/2010/0065/RM.

- 8.8 The garage foundation is on site and viewed during the site inspection have been in place a lengthy period of time (given the overgrown vegetation in the vicinity of the foundation.) The foundation is not in accordance with the approved plans of planning permission B/2010/0065/RM. Therefore the work carried out is unauthorised.
- 8.9 The key date for the commencement is 10<sup>th</sup> June 2012. The garage foundation on site is not in accordance with the application B/2010/0065/RM. No other work has been carried out to construct the approved dwelling and garage. The demolition of the old dwelling and outbuilding is not considered to be a material operation. The aerial image of 8th June 2013 is significance in that it shows that no further work occurred between 19th April 2012 and 8th June 2013. On this basis, the planning permission B/2010/0065/RM has expired.

## **9 CONCLUSION**

While the applicant has demolished the dwelling on site, this does not constitute a lawful start. The garage foundations do not relate to the permission and as such are unauthorised. Therefore the permission has expired. Refusal is recommended.

## **10. REFUSAL REASON**

The Council, having considered the information provided, is not satisfied that sufficient evidence has been submitted to show that the operations specified above and shown on the attached drawing No 01 which was received on 27th September 2017 and 06 which was received on 20th November 2017 benefits from the planning permission granted by reference B/2010/0065/RM dated 10th June 2010 because : The proposed development has not commenced in accordance with The Planning Act (Northern Ireland) 2011, Section 63 and as such the planning permission has expired and is not therefore immune from enforcement action.

