

Addendum & Erratum

LA01/2022/0239/F

1.0 Update

- 1.1 To amend Refusal reason 1. set out in Section 10 of the Planning Committee Report.
- 1.2 To advise where the proposal is referred to as a 'building' in the PCR should be read as set out in the description of development as a 'sectional portable unit'.
- 1.3 To advise of Planning history on the site.

2.0 Assessment

- 2.1 The refusal reason should read as:

The proposal is contrary to Paragraph 6.70 of the Strategic Planning Policy Statement for Northern Ireland and Policies CTY 1 and 11 of Planning Policy Statement 21: Sustainable Development in the Countryside in that the proposal is not appropriate to its location in terms of character and scale, the development is not designed to integrate sympathetically with its surroundings, the design of the portable unit is inappropriate for the site and its locality.

- 2.2 In addition to the Planning history set out in section 2 of the Planning Committee report, please note that an Enforcement notice (EN) on the sectional portable unit in use as a dwelling and other ancillary development was served and was subject to an appeal. The Commissioner advised that the matters cited in the EN are not permitted development and are a breach of planning control. The applicant was given 9 months from the date of EN to remove the development and restore the lands. The appeal decision is attached.

3.0 Recommendation

- 3.1** That the Committee note the contents of this Addendum and agree with the recommendation set out in section 9 and the policies and guidance in sections 7 and 8 of the Planning Committee Report and resolves to REFUSE planning permission subject to Refusal Reason 1 above and Refusal reason 2 set out in section 10 of the Planning Committee Report.

Enforcement Appeal Decision

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Appeal Reference:	2022/E0009
Appeal by:	Mr James Moore
Appeal against:	An Enforcement Notice dated 27 April 2022
Alleged Breaches of Planning Control:	(a) Siting of sectional unit, in use as a dwelling and lean to structure and (b) Installation of oil tank, washing line, children's swing and children's slide; making a material change of use of land. (c) Construction of underbuilding, patio, patio rails and concrete steps; (d) Installation of water, drainage and electricity services and (e) Installation of hardstanding aggregate.
Location:	Lands approximately 60m South East of 190 Coleraine Road, Portstewart.
Planning Authority:	Causeway Coast and Glens Borough Council
EN Reference:	EN/2022/0075
Procedure:	Informal Hearing on 8 March 2023
Decision by:	Commissioner Mandy Jones dated 6 April 2023.

Grounds of Appeal

1. The appeal was brought on Grounds (c), (a), (f) and (g) as set out in Section 143 (3) of the Planning Act (Northern Ireland) 2011. However, the deemed planning application fee for the development as set out in the Enforcement Notice (EN) was not paid and the Ground (a) appeal has therefore lapsed.

Ground (c) that the matters which have occurred do not constitute a breach of planning control.

2. The appellant's case is that planning permission was granted for a farm dwelling and garage (LA01/2022/0250/RM) on 21 April 2022 and he has now commenced construction of this dwelling. As such, it was argued that the alleged breaches of planning control cited on the EN at paragraph 3 are now Permitted Development under Class A, Part 5 – Temporary Buildings and Uses of the Planning (General Permitted Development) Order (Northern Ireland) 2015 (GPDO) which states :

Part 5 – Temporary Buildings and Uses – Class A, Permitted development,

'The provision on land of buildings, movable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land'

3. The following is a timeline of events:
 - The sectional unit in use as a dwelling and the remaining elements cited at paragraph 3 have been in place since before 2020, according to the appellant. Aerial photographs submitted by the Council, indicate that these were in place within the site on May 2018 but not on May 2017. This more accurate date of May 2018 was not disputed by the appellant;
 - Enforcement Notice (EN/2022/0075) dated 27 April 2022 was issued;
 - Submission of outline application for a farm dwelling and garage on 5th March 2021 (LA01/2021/0271/O);
 - Outline approval for a farm dwelling and garage on 14 June 2021 (LA01/2021/0271/O);
 - Approval of Reserved Matters granted for a dwelling and detached garage for the appellant on 21 April 2022 (LA01/2022/0250/RM);
 - Building Control approval obtained 7 November 2022;
 - Construction work commenced for the approved dwelling and garage around November / December 2022. Works to date include strip foundation trenches dug and concrete poured, hardcore sub floor in place and blocks laid to floor level.
4. The approved site for the farm dwelling and the EN site as indicated on the attached map are directly adjacent to each other – there is no overlap. The appellant states that the sectional unit will provide residential accommodation for his young family during the construction of the adjacent approved dwelling - which is a self-build project. The sectional unit is not intended to be permanent. I was told that the appellant is only able to finance the approved dwelling due to living in the sectional unit as they could not afford to rent residential accommodation in Portstewart and save to build the new dwelling. It was claimed that the success of the construction project is dependent on the mobile home. The appellant argues that it is permitted development as it is too large to meet the dimensional limits of a caravan. The sectional building splits into three integral parts and sits on blocks held in place by its own weight. The utility room / store is a lean-to structure constructed of corrugated metal.
5. A key test in Part 5, Class A – Temporary Buildings and Uses is that the development is 'required temporarily in connection with and for the duration of operations being or to be carried out.' Notwithstanding the fact that the sectional unit in use as a dwelling has been insitu since at least May 2018, I consider that its siting adjacent to the approved dwelling could be described as desirable, convenient and a good financial decision for the appellant, but not 'required'. Unlike the siting of structures for the storage of construction materials, plant or

machinery which are required in connection and inextricably linked with new development, the success of the construction of the approved dwelling is not dependant on whether another unit in use as a dwelling can or cannot be sited adjacent to it. I would concur with the Council that it does not meet the 'required' test.

6. Part 5, Class A makes no reference to residential uses and does not relate in any way to temporary residential accommodation. The current internal layout of the sectional unit includes a fully fitted kitchen/ dining room, living room, two bedrooms, entrance hallway and bathroom and is solely for residential accommodation. I consider that Part 5, Class A provides that certain developments are permitted development which are only required temporarily in connection with the construction of another development that has been granted planning permission. Typically, it would apply to builders site huts, storage huts, plant or machinery required in connection with a construction project. Part 5, Class A only authorises the placing or stationing of structures and not the residential use of those structures.
7. Undisputed evidence was that the sectional unit, lean to structure, oil tank, underbuild, patio, steps and connection to water, drainage and electricity services etc have been insitu since at least May 2018 – which was almost 4 years prior to the service of the EN. It has a fully fitted kitchen and bathroom, underground connections to water, drainage and electrical mains services, as well as a separate oil tank. The sectional unit is sitting on a hardcored underbuild base and concrete steps and patio area connect the sectional unit to the ground. Notwithstanding its sectional construction, I consider that given the type and scale of accommodation, quality and extent of internal fit outs, service and physical connections to the ground and the length of time it has been in situ, it cannot be considered as temporary. To my mind, it does not exhibit temporary characteristics. I was told by the Council that there is currently a planning application which seeks to retain this sectional unit permanently for Airbnb accommodation. (LA01/2022/0239/F). This does not demonstrate the appellant's intent for it to be temporary.
8. It is clear to me from the timeline that it was not brought to site and assembled to facilitate the construction of the adjacent approval. Rather, it was brought to site approximately 3 years prior to the submission of the outline application (LA01/2021/0271/O) on 5th March 2021. Part 5, Class A - Temporary Buildings and Uses permits the provision of buildings required temporarily in connection with and for the duration of operations being or to be carried out, which is subject to the grant of planning permission.
9. Part 5, Class A.1 states that development is not permitted by Class A if (b) planning permission is required for those operations but is not granted. Outline planning permission was granted for the adjacent dwelling (LA01/2021/0271/O) on 14 June 2021, as such the sectional unit could not benefit from any Part 5 permitted development rights until the reserved matters application (LA01/2022/0250/RM) was approved on 21 April 2022 – and as I have already concluded this would only be on the premise that it was not for residential use. The appeal development is not 'in connection with' or ' for the duration of operations being or to be carried out.'

10. As I have found that the matters cited on the EN are not permitted development and are a breach of planning control the appeal on Ground (c) must fail.

Ground (f) that the steps required by the notice to be taken, or the activities required to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or to remedy any injury to amenity caused by any such breach.

11. Section 140 of the Planning Act requires an EN to specify the steps required to be taken or the activities required to cease in order to achieve, wholly or partly, certain stated purposes. These purposes include remedying the breach of planning control by restoring the land to its condition before the breach took place or remedying any injury to amenity caused by the breach.
12. The steps are set out in paragraph 4 of the EN and include to permanently cease use as a dwelling and the removal of the sectional unit and lean to structure, oil tank etc, underbuild, patio, patio rails and concrete steps, all water and drainage connections and services and hard standing. It requires restoration of the land edged in red on the attached map to its condition before the breaches took place. Aerial photographs dated 5 May 2017 submitted by the Council show the land previously was agricultural.
13. The appellant offered no persuasive arguments as to why he believes the steps set out exceed what is necessary to remedy the breach of planning control. The breach of planning control can only be remedied by the cessation of the residential use and the removal of all elements set out in paragraph 4 of the EN. Accordingly, the appeal on ground (f) fails.

Ground (g) – that the period specified in the notice falls short of what should reasonably be allowed.

14. The time period set out in the EN is 84 days (12 weeks). The appellant initially requested an extension of the time period for compliance to 6-9 months to allow the adjacent farmhouse to be completed. At the hearing, he extended this to 12 months.
15. The appellant is a full-time farmer of a 159 hectare farm and the EN site is within the farm lands. The responsibility of running the farm falls on him whilst his father is currently in hospital. The farm milks more than 260 cattle per day and has 169 beef cattle – there is a total livestock of 679 cattle. He needs to live on the farm for logistical, security and operational reasons. He starts work at 4.45am and normally works to 7pm, often working later cutting silage.
16. I was told that the overall construction period for the farm dwelling self build project is 12 months. I am persuaded by the appellant's site-specific arguments to remain in the sectional unit which will allow him to stay on the farm until the construction of the farm dwelling is completed. Given the extent of work completed to date on the approved farmhouse, I consider 9 months would be a reasonable time period from the date of this decision to allow completion of the adjacent farm dwelling to a

standard which would allow his young family to move into and allow compliance with the EN. The appeal on ground (g) succeeds.

The Decision is as follows :

- The appeal on ground (c) fails;
- The appeal on ground (f) fails;
- The appeal on ground (g) succeeds and the time for compliance is extended to 9 months.

COMMISSIONER MANDY JONES

List of Appearances at Remote Hearing

Planning Authority: Gary McClelland (Causeway Coast & Glens Borough Council)
Glen Doherty (Causeway Coast & Glens Borough Council)

Appellant: Matt Kennedy (MKA Planning)
Raymond Doherty (Architect)
Maureen Moore (for the appellant)

List of Documents

Planning Authority: 'A' Statement of Case

Appellant: 'B' Statement of Case