

ITEM G

**Adjacent to 20 Ballyportery Road
Cloughmills**

D/2014/0220/O

Outline Planning

16 December 2015

<u>No:</u>	D/2014/0220/O	<u>Ward:</u>	Knockaholet
<u>App Type:</u>	Outline Planning		
<u>Address:</u>	Adjacent to 20 Ballyportery Road, Cloughmills		
<u>Proposal:</u>	Proposed Replacement Dwelling and Garage		
<u>Con Area:</u>	N/A	<u>Valid Date:</u>	17th November 2014
<u>Listed Building Grade:</u>	N/A	<u>Target Date:</u>	
<u>Applicant:</u>	Mr Mervyn Smith c/o Agent		
<u>Agent:</u>	Slemish Design Studio, Raceview Mill, 29 Raceview Road Broughshane		
<u>Objections:</u>	1	<u>Petitions of Objection:</u>	0
<u>Support:</u>	1	<u>Petitions of Support:</u>	0

Drawings and additional information are available to view on the Planning Portal- www.planningni.gov.uk

1 RECOMENDATION

- 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 section 7 and resolves to **Refuse** planning permission subject to the refusal reasons set out in section 10.

2 SITE LOCATION & DESCRIPTION

- 2.1 The site is set back approximately 110 metres from the public road and is accessed via an existing laneway serving an existing dwelling and outbuildings as well as agricultural lands to the rear. The land rises from the road to the site which is elevated and positioned on the crest of the hill.

- 2.2 The proposed replacement opportunity is to the south east of the existing dwelling No 20 Ballyportery Road.
- 2.3 There is a very close relationship between the proposed replacement and the adjacent dwelling and outbuildings. No 20 consists of a small single storey detached dwelling which is fairly traditional with a yard to the rear enclosed by a number of existing stone outbuildings.

3 RELEVANT HISTORY

None

4 THE APPLICATION

- 4.1 This is an outline application for a replacement dwelling. An off-site location is proposed to the south west of the replacement.

5 PUBLICITY & CONSULTATIONS

External

- 5.1 **Neighbours:** One (1) Objection received raising the following issues:

- 1) Maintenance of existing stone wall.
- 2) Impact on character / landscape.
- 3) Obstruct overview / devalue property.
- 4) Impact on foundations.
- 5) Impact on privacy / amenity.

Internal

- 5.2 **Transport NI:** Has no objection to the proposal subject to condition.

NIEA Protecting Historic Monuments Division: Has no objection.

NI Water: Has no objection to the proposal.

Environmental Health: Has no objection to the proposal.

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:

- Northern Area Plan 2016

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 both a new local plan strategy and local policies plan are adopted, and found to be sound, 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

Strategic Planning Policy Statement (SPPS)

Northern Area Plan 2016

Planning Policy Statement 2 (PPS 2) Natural Heritage

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

Planning Policy Statement 6 (PPS 6) Planning, Archaeology and Built Heritage

Planning Policy Statement 21 (PPS 21) Sustainable Development in the Countryside

8 CONSIDERATIONS & ASSESSMENT

- 8.1 The main considerations in the determination of this application relate to the principle of development and the proposed siting.

Planning Policy

- 8.2 The site is located within the rural area as identified in the Northern Area Plan 2016.
- 8.3 The principle of this development proposed must be considered having regard to the SPPS and PPS policy documents specified above and any other material considerations.
- 8.4 The SPPS was published 28 September 2015. In the Ministerial Statement published with it the Minister of the Environment, Mr Durkan stated that the provisions of the SPPS are material to all decisions on individual planning applications and appeals.
- 8.5 Paragraph 6.73 bullet point 2 of the SPPS in relation to replacement dwellings echoes policy CTY 3 of PPS 21.
- 8.6 Policy CTY 3 of PPS21 is the relevant policy context for such proposals and 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”. Therefore, the consideration is set out below assessing the two elements of the primary criteria in that order.
- 8.7 The structure to be replaced is in a very poor state of repair and consists of two existing gables which are reasonably intact. The remainder of the structure, including the front and rear elevations and internal walls, consist of little more than remnants approximately 1m high. Most of the internals of the structure has collapsed and become fairly overgrown with vegetation and trees growing through.
- 8.8 Some evidence of the use of the structure as a dwelling does remain including a window opening (including sill) and fireplace. The presence of these features would indicate that the structure meets with the first part of the policy test and that it exhibits the essential characteristics of a dwelling.

- 8.9 The second part of the policy test is that as a minimum all external structural walls are substantially intact. In July 2013 the then Minister of the Environment, Alex Attwood published further guidance on PPS 21. In relation to Policy CTY 3, he identified a need for greater flexibility in the policy and that the walls of a replacement opportunity did not need to be 100% intact.
- 8.10 The Planning Appeals Commission (PAC) in Appeal Ref: 2015/A0030 refer to the dictionary for the definition of 'Substantial' which is of an ample or considerable amount and the word 'Intact' defined as complete or whole to assist in the policy requirement. This is again supported by the PAC in 2015/A0068. Both appeal decisions are available to view on the PAC website www.pacni.gov.uk
- 8.11 The walls of the replacement dwelling in this application would, in their entirety be well below 50% intact and could not be regarded as substantial and intact.
- 8.12 The Applicant advised that soil has built up over the years and covers the extent of the walls. The property is as stated in paragraph 8.7 in a poor state of repair. There is a soil heap against the northern side. Nonetheless, it is evident that the walls do not extend, on either side up to, or near to, the eaves of the gables. Only a small element of a porch is evident to the south elevation. The building is in a ruinous state.
- 8.13 The applicant has referred to other examples which are highlighted below.
- 8.14 B/2010/0423/O was permitted at Appeal. Whilst the Commissioner considered that in its current condition it did not meet the policy tests, they considered the evidence regarding the condition on the date of the submission of the application. This application is not comparable to B/2010/0423/O as it was in a ruinous state at the time of the application date and by the evidence on site has been for some time.
- 8.15 D/2014/0116/O was approved by the Department. The Department considered that the four external walls were substantially intact in this case. As discussed in paragraphs 8.8 to 8.10 above this application is in a ruinous state and would not

be of a similar condition as the replacement opportunity approved under D/2014/0116/O.

- 8.16 E/2009/0349/O and E/2011/0123/O were both approved for replacement dwellings. The structures both had three walls completely intact and in both cases although the rear wall was not sustainably intact when taken in the whole it was considered that the majority of the walls were substantial and intact and therefore met with policy.
- 8.17 The remainder of CTY 3 sets out 5 criteria to meet once the principle has been established. Though the principle for the development has not been met in this case it would be prudent to address the remainder of the policy for completeness.
- 8.18 Criteria 1 states that the proposed replacement is sited within the established curtilage of the existing building unless either (1) the curtilage is so restricted that it could not reasonably accommodate a modest size dwelling, or (b) it can be shown that an alternative position nearby would result in demonstrable landscape, heritage, access or amenity benefits.
- 8.19 The existing curtilage is quite restrictive and as such an extension to the curtilage would be generally reasonable. However, the proposed curtilage is extensive and its size would not be in keeping with the rural character.
- 8.20 The second bullet point seeks that the size of the new dwelling integrates into the surrounding landscape and would not have a visual impact significantly greater than the existing building. The curtilage should be restricted or reduced to a more appropriate size and the siting of any replacement dwelling conditioned to retain a reasonable degree of visual linkage between the proposal and the existing group. To ensure a proposed dwelling would not be prominent a single storey dwelling would be appropriate.
- 8.21 Transport NI have no objection. However the impact of the proposed new laneway around the front (north-eastern) boundary of the existing site will result in a significant visual impact being located on elevated land and on the most open boundary and be detrimental to the hill top setting of the group.

Other Matters

- 8.22 The objector raised concern in relation to the maintenance of existing stone walls. The walls appear to form the boundary and as such the applicant would currently require permission to enter the applicants land in order to carry out any works from that side.
- 8.23 The objector is concerned with his loss of view and possible impact on his property's' value if the development went ahead. It is unlikely that the proposed access would impact on views from the neighbouring property which sits at a higher level. Paragraph 2.3 of the SPPS states that the planning system does not exist to protect the private interests of one person against the activities of another. Furthermore, it is not whether owners and occupiers or neighbouring properties would experience financial loss from a particular development, but whether the proposal would unacceptably affect amenities and the existing use of land and buildings. The proposal does not appear to result in any significant impact on residential amenity.
- 8.24 In relation to the concern in the risk of damage to the foundations. There is a rise in the land which the proposed access is to cut into, the level of excavation would be minimal and it would be unlikely that the works required for the access would make the ground at the objectors dwelling unstable.

9 CONCLUSION

- 9.1 The proposal is considered unacceptable in this location having regard to the Northern Area Plan, and other material considerations, including the SPPS. The proposal to replace a dwelling fails to meet the primary test of Policy CTY 3, in that the external walls of the dwelling to be replaced are not substantially intact. Refusal is recommended.

10 Refusal Reasons:

- 10.1 The proposal is contrary to the Strategic Planning Policy Statement Planning for Sustainable Development and Policy CTY1 of Planning Policy Statement 21, Sustainable Development in the Countryside in that there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.
- 10.2 The proposal is contrary to Paragraph 6.73 bullet point 2 of the Strategic Planning Policy Statement Planning for Sustainable Development and Policy CTY3 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that the external structural walls are not substantially intact.
- 10.3 The proposal is contrary to Paragraph 6.70 of the Strategic Planning Policy Statement Planning for Sustainable Development and Policies CTY13 and CTY 14 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that the ancillary works do not integrate with their surroundings and therefore would not visually integrate into the surrounding landscape and would result in a detrimental change to the rural character of the countryside.