

Planning Committee Report	25th January 2017
PLANNING COMMITTEE	

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

**Site 115m North West of 214
Baranailt Road, Tartnakilly,
Limavady**

**LA01/2015/0370/F
Full Application**

25th January 2017

<u>No:</u>	LA01/2015/0370/F	<u>Ward:</u>	Ballykelly
<u>App Type:</u>	Full Application		
<u>Address:</u>	Site 115m North West of 214 Baranailt Road, Tartnakilly, Limavady		
<u>Proposal:</u>	Retention and completion of chalet dwelling and detached double domestic garage with associated alterations to ground levels using inert material to provide mounding and landscaping to curtilage (Amended siting for chalet dwelling and detached domestic garage approved under planning permission ref. no. B/2001/0021/F)		
<u>Con Area:</u>	N/A	<u>Valid Date:</u>	1 st July 2015
<u>Listed Building Grade:</u>	N/A		
<u>Agent:</u>	Tyrone Forsythe & Associates Ltd, 36 Freughlough Road, Castledearg, BT81 7JT		
<u>Applicant:</u>	Rev Hemphill		
<u>Objections:</u>	4	<u>Petitions of Objection:</u>	0
<u>Support:</u>	0	<u>Petitions of Support:</u>	0

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

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 section 7 & 8 and resolves to **REFUSE** full planning permission for the reasons outlined in section 10.

2 SITE LOCATION & DESCRIPTION & CHARACTER OF AREA

- 2.1 The site comprises a two storey dwelling which remains under construction. While the building is largely complete with the roof and windows in place the internal fittings have not been completed and the block work remains exposed. Waste material has been deposited across the site and has been augmented to create a flat surface. This infilling is most evident when viewing the site from the south where the building is clearly set on an artificial platform with the steeply graded side falling to the original ground level.

2.2 The site is on the Baranait Road which falls within the rural remainder of land as designated within the adopted Northern Area Plan 2016. There are no further designations within the site or the immediately adjacent area.

3 RELEVANT HISTORY

B/1998/0238 - 38A Baranait Road Tartnakilly, Limavady - Site for dwelling – Approved 30.04.1999

B/2001/0021/F - Baranait Road, Tartnakilly, Limavady - Erection of chalet dwelling and detached double domestic garage – Granted 09.05.2001

LA01/2016/0023/LDP - Land 115m North West of No. 214 Baranait Road, Tartakilly, Limavady - Proposed completion of dwelling in accordance with plans approved under B/2001/0021/F – Recommended to Committee with opinion to Refuse 28.10.2016 but deferred the application to allow the Planning Authority to consider the late objection. Returned to Committee on 25th January 2017.

An outline site for a dwelling was approved under B/1998/0238 under a Planning Strategy for Rural Northern Ireland. A subsequent full application granted permission for a chalet dwelling and detached double garage in 2001. The current application which is subject to this consideration was submitted in 2015 as a result of ongoing enforcement investigations. The enforcement investigations resulted in the issue of an enforcement notice in 2015. The applicant failed to comply with the enforcement notice and instead chose to appeal the notice. In appealing the notice the PAC considered the proposal as a deemed application and ruled on various points including the acceptability of the proposal under current planning policy. A decision was issued in August 2016 by the PAC which found the appeal to fail on four counts,

- a) That the dwelling was not substantially complete.
- b) That the dwelling and infill did not comply with planning policy
- c) That the steps required to remedy the breach of planning control to be necessary
- d) The time given to carry out the steps necessary to remedy the breach to be appropriate.

The result of the appeal was that the enforcement notice was upheld and that the applicant must permanently remove the unauthorised dwelling and resultant rubble within 168 days from 23rd August 2016.

4 THE APPLICATION

- 4.1 This is a full application for the retention and completion of chalet dwelling and detached double domestic garage. The proposal also involves the alterations of ground levels using inert material to provide mounding and landscaping to the curtilage (Amended siting for chalet dwelling and detached domestic garage approved under planning permission ref. no. B/2001/0021/F).
- 4.2 The application was brought before Committee on 26th October 2016 with a recommendation to refuse. Committee deferred the application to allow consideration of the objection which was received on the day of the Committee meeting.

5 PUBLICITY & CONSULTATIONS

External:

- 5.1 **Neighbours:** 4 letters of objection were received which can be summarised as follows.

3 of the letters of objection were received from or on behalf of the resident of 212 Baranailt Road. The issues of concern are the scale, massing and design of the dwelling and the impact of dumping on the site over a sustained period of time. The objector refutes the description in that it outlines the retention of an approved development stating that the constructed dwelling is completely different from the dwelling which was previously approved under B/2001/0021/F with regards to siting, design and height due to the increase in ground level. A separate detailed report outlines that the proposal is contrary to Policies CTY2a, 3, 4, 5, 6, 7, 8, 10, 12, 13 and 14.

1 letter of objection was received on the 26th October 2016. It advised that the building was built in the wrong place and was an eyesore. The objector advised that the ridge height exceeds the height as approved and advised that hazardous waste has been dumped on the site. The letter advised that the waste

contained rubble, asbestos and fluids which had the potential to impact on the environment by connecting to an adjacent water course. Given the nature of the issues raised in the objection the Planning Authority proceeded to consult NIEA – Waste Management Land and Groundwater Team who are the competent authority who advise on infilling and potential contamination. The responses to the objection are detailed below and can be viewed on the planning portal. In addition the Planning Authority’s assessment of height and visual impact is set out in section 8.

Internal:

5.2 NIEA- Water Management Unit – No objection subject to conditions.

NIEA – Waste Management Land and Groundwater Team –

The original consultation response in October 2015 raised no objection subject to conditions to include sampling and laboratory testing of fill materials, made ground and groundwater, risk assessment(s), and if necessary a remedial strategy in accordance with the Model Procedures for the Management of Land Contamination (CLR11).

The Planning Authority carried out further consultation with NIEA – WMLGT to seek their opinion on the objection letter received on 26th October 2016. NIEA-WMLGT referred to the site investigation report which had been provided by the agent for the enforcement appeal on this site in January 2016. As laboratory analysis of the infill materials at that time did not suggest that the infill was of a contaminating nature NIEA-WMLGT revised the suggested conditions to require all work should cease on site and NIEA to be notified if during development any new contamination or risks are encountered which have not previously been identified. In this event the new contamination will be fully investigated in accordance with Model Procedures for the Management of Land Contamination (CLR11). In the event unacceptable risks are identified a remediation strategy shall be agreed and implemented.

As the potential dumping raised by the objector could have taken place since the investigation report of January 2016 NIEA-WMLGT forwarded the issue to NIEA Intelligence Unit and

Environmental Crime Unit who have since concluded not to take any further action.

TransportNI – No objection subject to conditions

Environmental Health – No objection.

NIWater – No objection.

6 MATERIAL CONSIDERATIONS

- 6.1 Section 45(1) of the Planning Act (Northern Ireland) 2011 requires that all applications must have regard to the local plan, so far as material to the application, and all other material considerations. Section 6(4) states that in making any determination where regard is to be had to the local development plan, the determination must be made in accordance with the plan unless material considerations indicate otherwise.
- 6.2 The development plan is:
 - 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 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 The decision of the Planning Appeals Commission under reference 2015/E0035 is also a material consideration.
- 6.7 All material considerations and any policy conflicts are identified in the “Considerations and Assessment” section of the report.

7 RELEVANT POLICIES & GUIDANCE

Northern Area Plan 2016

Strategic Planning Policy Statement

PPS 3 - Access, Movement and Parking

PPS 21 – Sustainable Development in the Countryside

DCAN 15 – Vehicular Access Standards

PPS11 – Planning and Waste Management

8 CONSIDERATIONS & ASSESSMENT

- 8.1 The main considerations in the determination of this full application are; the principle of development; personal and domestic circumstances; integration; impact on rural character; and the alterations of ground levels with the disposal of inert waste.
- 8.2 The site is located within the rural remainder as designated within the adopted Northern Area Plan 2016. There are no further designations within the site or the immediately adjacent area. The main policy consideration is contained within the Northern Area Plan 2016, the Strategic Planning Policy Statement and the relevant Planning Policy Statements. This is a proposal for the retention and completion of a dwelling and garage currently under construction and the alteration of ground levels using inert material to provide mounding and landscaping as an amendment to a previous approval in 2001. The site lies within the rural area as identified in the Northern Area Plan 2016. As such the main policy consideration is PPS 21 and PPS11. The main policy considerations within these policies are CTY 1, 6, 13 and CTY 14 of PPS21 and WM4 of PPS11.

Principle of development

- 8.3 Policy CTY1 of PPS21 states that there are a range of types of development that may be acceptable in principle in the countryside. 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.

- 8.4 The applicant has not demonstrated that the proposal meets any of the exceptions laid out in CTY1 of PPS 21 for a single dwelling in the countryside and no overriding reasons why this development is essential and could not be located in a settlement have been forthcoming. In this case there is no existing cluster of buildings, no dwelling to be replaced, domestic/special circumstances case, no non-agricultural business, no gap site and no evidence of an active farm. The proposal therefore fails to comply with Policy CTY1 of PPS21.
- 8.5 The Appeal Decision under 2015/E0035 confirms that the existing structure on site was not substantially complete by 1st September 2010 and is therefore not immune from enforcement. The decision also ruled that ancillary works that have been carried out did not constitute commencement of the development approved under B/2001/0021/F and that the totality of the changes constitute a new development to that approved in May 2001 and as such planning permission is required. As no fallback position exists on site in that a material start was not made on the back of the 2001 approval to keep it live in perpetuity, determining weight must rest with CTY1, therefore the proposal fails to comply with CTY1 for the reasons stated.

Personal and domestic circumstances

- 8.6 The proposal is contrary Paragraph 6.70 of the SPPS, Policy CTY6 of Planning Policy Statement 21, Sustainable Development in the Countryside in that: the applicant has not provided compelling long term and site specific 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. In addition the applicant has not demonstrated that he has explored alternative solutions to meet the particulars of the case.
- 8.7 The applicant has not adequately demonstrated that genuine hardship would be caused if planning permission were refused. The applicant currently lives at 187 Main Road, Portavogie and as such is not dependent on this dwelling as his only home. While the applicant has indicated to the Council that he wishes to retire to this location, this desire is not site specific to this address at Baranailt Road nor is it compelling. A new dwelling

of this size and in this location is not a “necessary response” to his particular circumstances.

- 8.8 While the Council acknowledges that there has been significant financial investment in building the dwelling and there would be some further investment in having it removed this is insufficient to permit a dwelling under policy CTY6. The Council would point out that anyone who undertakes unauthorised development does so at his or her own risk. The advanced stage of the unauthorised development is not sufficient reason to set aside paragraph 6.70 of SPPS and Policy CTY6 of PPS21. To allow unauthorised development to remain on the basis of hardship could undermine the enforcement process and set a wide ranging precedent.
- 8.9 In considering the personal and domestic circumstances of the case, the PAC stated, “I appreciate the appellant would suffer some degree of distress, however I do not consider that factor in itself or in combination with the financial impact is sufficient to outweigh the valid planning objections to the appeal development.”

Integration

- 8.10 The proposal is contrary to Paragraph 6.70 of the SPPS and Policy CTY13 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that: the building is a prominent feature in the landscape; the site lacks long established natural boundaries/is unable to provide a suitable degree of enclosure for the building to integrate into the landscape; the proposed building relies primarily on the use of new landscaping for integration; the design of the proposed building is inappropriate for the site and its locality; the proposed building fails to blend with the landform, existing trees, buildings, slopes and other natural features which provide a backdrop.
- 8.11 Under CTY13 a new building will be unacceptable where it fails the tests laid out as described below.
- (a) This dwelling is an exceptionally prominent feature in the landscape. The existing land levels further accentuate the extent of this prominence by artificially raising the dwelling up to approximately level with the road. The dwelling dominates the

immediate area by virtue of its bulk and massing and the elevated position it occupies adjacent to the road.

(b) There are no natural boundaries around the site which is a cut out of a larger field. The larger field has sparse trees and vegetation to the North West and to the Western field boundary however, these do not provide any enclosure or backdrop which the constructed dwelling can integrate against. The removal of the roadside hedging further adds to the lack of enclosure when viewed from Baranait Road.

The main critical views are from No. 221A on Baranait Road travelling south until past the dwelling from which the dwelling is overbearing and dominant in the landscape. Travelling North along the Baranait Road from adjacent to No. 240 the totality of the dwelling conspicuously breaks the horizon and jars with the landscape for around 1000m. The impact is particularly evident immediately adjacent to the site frontage. The dwelling is a particularly prominent and incongruous feature in the landscape. Its prominence is exacerbated by the fact that it does not respect nor in any way tries to acknowledge the natural decline of the land away from the road which means that it fails to integrate within the site. Instead an artificial platform has been created on which the dwelling is positioned.

(c) Due to the lack of any boundaries around the site for the dwelling, there is no integration. Any future integration would be dependent on new landscaping which would render the building unacceptable in policy terms.

(d) In this case the ancillary works carried out are the creation of a platform of land upon which the dwelling was constructed. On approaching the site from either direction on the Baranait Road, this platform sits prominently above the existing field levels and renders the dwelling prominent in the landscape.

(e) The design of the building is inappropriate for the site in that it does not make use of the natural feature of the slope in the field. The scale and massing of the dwelling is significant and causes it to be overbearing when compared with the prevailing character of the immediate area which is either single storey or modest 2 storey dwellings sited gable onto the road. The level of infilling which has created the artificial platform elevates the dwelling to such a degree that the augmented site could not accommodate even a single storey dwelling.

The Council is mindful of the house type which was approved under the 2001. However, the dwelling as constructed and which is subject of this application is materially different from the 2001 approval in terms of orientation, height, design detailing, garage and driveway position and its elevation onto a 2m high artificial platform. Therefore determining weight in the consideration of the proposal must rest with current planning policy under CTY13 of PPS21. As the totality of the proposed development fails to comply with policy the Council have not sought an amended design in this case.

(f) This dwelling fails to respect the existing topography as the construction method used sought to ignore the landform and then dominate it, with the creation of the platform. The site selected has no other natural features with which it could provide a backdrop in order to achieve any integration.

- 8.12 The recent appeal decision also endorses this view with the commissioner stating, “I agree with the Council that satisfactory integration of the appeal dwelling is wholly dependent on implementing the new mounding, landscaping and planting proposed by the appellant. As a consequence of the foregoing circumstances the appeal development fails to meet 4 of the 7 criteria of CTY 13 and therefore fails to comply with the policy as a whole.”

Impact on Rural Character

- 8.13 The proposal is contrary to Paragraph 6.70 of the SPPS, Policy CTY14 of Planning Policy Statement 21, Sustainable Development in the Countryside in that: the building would, if permitted, be unduly prominent in the landscape and would therefore result in a detrimental change to the rural character of the countryside.
- 8.14 CTY14 of PPS21 states when a new building will be unacceptable. This building is unduly prominent in the landscape as discussed above due to its scale and massing and the siting elevated on an artificial platform within the larger site.
- 8.15 The dominance of this building erodes rural character due to the poor siting and design as described above. It will also cause a detrimental change to an area where the prevailing character is single storey dwellings or more modest traditional 2

storey buildings which are sited gable onto the road. Moreover this dwelling unduly prominent in an open and exposed landscape.

- 8.16 The PAC decision supports this assessment stating, “the appeal development is an unduly prominent feature in the landscape and as such it also fails to comply with Policy CTY 14.”

Alterations of ground levels with the disposal of inert waste.

- 8.17 The SPPS and PPS11 set out the planning policies for the management of waste. The SPPS in paragraph 6.321 advises that important considerations will include; the type of waste to be deposited; impact on human health and the environment; visual impact on the landscape; the permanent loss of the best and most versatile agricultural land and practical restoration and aftercare arrangements. The SPPS stipulates a precautionary approach advocating the protection of the environment unless there are imperative reasons of overriding public interest.
- 8.18 Two of the main objectives of PPS11 are to ensure that detrimental effects on people, the environment and local amenity associated with waste management facilities are avoided or minimised and to secure appropriate restoration of proposed waste management sites for agreed after use.
- 8.19 Policy WM4 entitled land improvement, will only permit the disposal of inert waste by its deposition on land where it is demonstrated that it will result in land improvement and where 4 criteria are met. This application seeks permission for the retention and completion of the dwelling and garage and the alteration of the ground level using inert waste to provide mounding and landscaping. It therefore refers to the deposition of inert waste which has taken place to date and future deposits to facilitate the proposed mounding and landscaping. In this case the applicant has failed to demonstrate that the disposal of inert waste by depositing it at this site to alter ground levels and to provide mounding will result in land improvement. No land constraints are evident at the site nor have any been identified by the applicant to merit the need to deposit inert waste to overcome constraints in order to allow the land to be appropriately developed. It is concluded that the deposition of

inert waste to alter ground levels to provide a raised platform on which to construct the dwelling and the mounding and landscaping is solely to artificially raise finished floor levels and to create screening and integration which is insufficient to comply with Policy WM4 of PPS11.

- 8.20 No information has been forthcoming as to the type or makeup of the inert waste to be used therefore the applicant has failed to demonstrate that the disposal of inert waste will not result in an unacceptable environmental impact that cannot be prevented or appropriately controlled by mitigation measures.
- 8.21 The applicant has failed to demonstrate any local need for the disposal of inert waste at this site. As previously stated the reason behind the disposal of waste is to raise ground levels and to artificially create screening and integration to the unauthorised dwelling, thus failing to demonstrate that this is the Best Practicable Environmental Option.
- 8.22 As the main purpose of the disposal of inert waste should be to improve land quality rather than to dispose of waste or to artificially sculpt a site, the quantity of waste should be kept to a minimum. To date no information has been forthcoming as to the amount or make up of the waste to be further deposited on the site.
- 8.23 Policy WM4 requires that detailed measures should be included for appropriate restoration and aftercare of sites that will help biodiversity. The proposal includes a mounding and landscaping scheme but as the amount and type of inert waste to be deposited is unknown the success of any landscaping is impossible to assess. On balance the proposal is contrary to the SPPS and Policy WM4 of PPS11.

9 CONCLUSION

- 9.1 The principle of development in the countryside has not been met. The scale and massing of the dwelling which has been constructed on site coupled with the significant alteration to the ground levels have created a highly prominent feature in the landscape with the main body of the house extending into the skyline. The situation is exacerbated by the lack of natural boundaries or inter-visible backdrop resulting in a starkly incongruous building set within an exposed landscape. In

addition, the applicant has failed to demonstrate that the deposition of inert waste is necessary to improve the land. Refusal is recommended.

10 REFUSAL REASONS

- 10.1 The proposal is contrary to Paragraph 6.73 of the SPPS and Policy CTY1 of Planning Policy Statement 21, Sustainable Development in the Countryside in that there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.
- 10.2 The proposal is contrary Paragraph 6.70 of the SPPS, 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.
- 10.3 The proposal is contrary to Paragraph 6.70 of the SPPS, Policy CTY13 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that: the building is a prominent feature in the landscape; the site lacks long established natural boundaries/is unable to provide a suitable degree of enclosure for the building to integrate into the landscape; the proposed building relies primarily on the use of new landscaping for integration; the design of the proposed building is inappropriate for the site and its locality; the proposed building fails to blend with the landform, existing trees, buildings, slopes and other natural features which provide a backdrop.
- 10.4 The proposal is contrary to Paragraph 6.70 of the SPPS, Policy CTY14 of Planning Policy Statement 21, Sustainable Development in the Countryside in that: the building would, if permitted, be unduly prominent in the landscape and would therefore result in a detrimental change to the rural character of the countryside.
- 10.5 The proposal is contrary to Policy WM4 of PPS11 in that it has not been demonstrated that the deposition of inert waste will result in land improvement.

