



Planning Committee Report LA01/2017/0468/LDP	27th September 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 opposite Nos 29/31 Vale
Road, Greysteel.**

LA01/2017/0468/LDP

27th September 2017

<u>No:</u>	LA01/2017/0468/LDP	<u>Ward:</u>	Greysteel
<u>App Type:</u>	Certificate of Lawful Development (proposed)		
<u>Address:</u>	Site opposite Nos 29/31 Vale Road, Greysteel		
<u>Proposal:</u>	<p>That operational works undertaken on site commenced Planning Permission Ref B/2008/0174/RM before it expired in August 2010, namely;</p> <p>Jan - Mar 2009 Removal of stone pillars, site vegetation, excavation of ground, formation of access onto public road, (access later tarmacked)</p> <p>Jan 2010 - Replacement dwelling demolished, rubble & foundations excavated & part removed from site. Ground works consisted of soil being excavated & existing rubble being used to form part of the site.</p> <p>These works commenced the planning application and to complete the proposed dwelling now is lawful.</p>		
<u>Con Area:</u>	N/A	<u>Valid Date:</u>	04.04.2017
<u>Listed Building Grade:</u>	N/A		
<u>Agent:</u>	Lee Kennedy Planning, 2 Templetown Park, L'Derry, BT47 6TZ		
<u>Applicant:</u>	Mr & Mrs McGonagle		
<u>Objections:</u>	0	<u>Petitions of Objection:</u>	0
<u>Support:</u>	0	<u>Petitions of Support:</u>	0

Drawings and additional information are 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 sections 7 and 8 and resolves to **REFUSE** to certify that the proposal is lawful for the reasons set out in section 10.

2 SITE LOCATION & DESCRIPTION

- 2.1 The site is located opposite Nos. 29 - 31 Vale Road, Greysteel. The site is a triangular shaped site which sits at the roadside and is located on a bend. The site is a relatively modest site at just over 0.2 hectares. The roadside boundary is defined by a grass verge which contains a row of mature trees along it which range from 8-10 metres in height (approximately) with hedgerow between. There is an existing access point near the northern corner of the site. The rear boundary of the site is defined only by a post and wire fence, which extends into the adjacent agricultural field. The north eastern boundary is defined by smaller trees and hedgerow which are approximately 4-5 metres in height. There are some mature trees in the western section of the site which range from approximately 6-7 metres in height. The site is relatively flat. The OS maps submitted and online mapping show that the site had previously been occupied by buildings, however no building currently occupy the site.
- 2.2 The site is located within the rural area to the south of Greysteel. The site is not located within any environmental designation. The area is characterised by rising land which rises generally to the south. The area is primarily used for agricultural purposes although there are a number of single roadside dwellings and farm complexes/buildings in the area.

3 RELEVANT HISTORY

LA01/2015/0906/LDP - The proposed completion of dwelling approved under DOE Ref: B/2008/0174/RM - Site opposite Nos 29/31 Vale Road Greysteel – Application Withdrawn – 11.01.2016

B/2014/0271/F - Erection of dwelling and garage - Opposite 29 to 31 Vale Road, Greysteel – Permission Refused 16.06.2015 – Appeal 2015/A0139 Dismissed 01.04.2016

B/2008/0174/RM - Erection of replacement dwelling - Land opposite 29 & 31 Vale Road, Greysteel, Limavady – Permission Granted 11.08.2008

B/2003/0360/O - Site for replacement dwelling - Opposite 29 & 31 Vale Road, Greysteel, Limavady – Permission Granted 10.05.2005

4 THE APPLICATION

4.1 Outline planning permission was granted on the site in 2005 and reserved matters approval granted in 2008 for a replacement dwelling, which required a material start by 10.08.2010. The applicant submitted a subsequent application in 2014 for the erection of a dwelling which was refused on the grounds that the application failed to comply with Policy CTY1 of PPS21. This decision was appealed and dismissed on the same grounds.

4.2 The proposal is a certificate of lawfulness to certify that operational works undertaken on site commenced Planning Permission Ref B/2008/0174/RM before it expired in August 2010 and to complete the proposed dwelling now is lawful. The works carried out in connection with the proposal are namely;

Jan - Mar 2009 Removal of stone pillars, site vegetation, excavation of ground, formation of access onto public road, (access later tarmacked)

Jan 2010 - Replacement dwelling demolished, rubble & foundations excavated & part removed from site. Ground works consisted of soil being excavated & existing rubble being used to form part of the site.

5 PUBLICITY & CONSULTATIONS

5.1 External

Neighbours: There are no objections to the proposal

5.2 Internal

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 (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.

7.0 RELEVANT POLICIES & GUIDANCE

The Planning Act (Northern Ireland) 2011

8.0 CONSIDERATIONS & ASSESSMENT

- 8.1 The main considerations in the determination of this Certificate of Lawful Development relates to whether the works carried out on the site constitute a material start on planning approval B/2008/0174/RM

Principle of Development

- 8.2 No definitive ruling can be given with regard to when development has been commenced as much will depend on the facts and degree of each case.

- 8.3 Causeway Coast and Glens council website gives the following example of when development has been considered to have been commenced in accordance with the permission granted as when

you have complied with conditions relating to works to be carried out prior to the commencement of other work e.g. the construction of an access in accordance with the approved plan **and**

- you have commenced any work of construction in the course of the erection of a building such as the digging of foundations and preferably pouring of concrete, driving piles or other substantive works;

- the laying of any underground main pipe to the foundations or part of the foundations of a building

8.4 The applicant has submitted a certificate of lawfulness for an existing use or development under Section 170 of the 2011 Act to establish whether operational works undertaken on site constitute the lawful commencement of planning permission granted under B/2008/0174/RM in accordance with the time limit before its expiry in August 2010.

8.5 In respect of the previous approvals on site (B/2003/0360/O & B/2008/0174/RM) there are three key conditions which were required to be implemented before development could commence.

- Condition No. 01 of planning approval B/2008/0174/RM required the development to be begun within either five years of the approval of outline approval, or within two years of the grant of reserved matters approval, whichever is the later. Consequently the development was required to have begun by 10/08/2010.

- Condition No. 4 of planning approval B/2003/0360/O requires the demolition of the buildings identified on the stamped approved plan 01 dated stamped 30/03/2015 to be demolished prior to the commencement of construction of the approved dwelling.

- Condition No. 2 of planning approval B/2008/0174/RM required that the vehicular access, including visibility splays and any forward sight line, shall be provided in accordance with the approved plans, prior to the commencement of any works or other development.

8.6 From a site inspection it is noted that all buildings which previously occupied the site have been demolished and the contents removed. It is noted that there is no evidence of foundations having been dug or poured in connection with the approved dwelling, nor had the vehicular access and visibility splays been put in place as required. There was no evidence of water pipes having been laid.

Access

8.7 The agent claims works took place in Jan – Mar 2009 (Appendix 3) to include removal of stone pillars, site vegetation, excavation of ground and formation of access onto public road. As evidence, the applicant submitted images indicating the access to the site. The images show that the access had not been put in place as required by B/2008/0174/RM, but instead a small opening had been created with a

small area of bitmac poured which TransportNI have confirmed is not in the correct position as per the approved details of the reserved matters. In addition, TransportNI have confirmed that the access arrangements as required by planning approval B/2008/0174/RM were not in place at the time of their previous site inspection on 15/12/2014.

- 8.8 The applicant submitted a survey of the existing conditions on site in March 2004 (Appendix 4), carried out by T J O'Neill. The survey indicates the position of the pedestrian access gate and pillars. The annotation on the drawing is hand written and states that the area coloured red was removed in 2009. It is unclear who has annotated the drawing and does not verify when the works took place. TNI have already verified that the access works were not carried out in accordance with the reserved matters in 2014 and the hand written note on the TJ O'Neill drawing does not verify otherwise.
- 8.9 The agent has stated that the works have been implemented. However, as previously stated, the access position which has been broken through the existing pedestrian access on site is not at the point authorised by the RM application. The limited access works to date are not in accordance with the planning permission and do not constitute commencement of B/2008/0174/RM.

Demolition

- 8.10 Demolition was not part of the meaning of development as expressed in Article 11 of The Planning (Northern Ireland) Order 1991. The Planning Amendment (Northern Ireland) Order 2003 introduced an amendment to Article 11 of the 1991 Order to include demolition in the meaning of development. The explanatory memorandum explained that Article 18 of the 2003 Order introduced an amendment that all demolition comes within the meaning of development for planning purposes however for the time being only buildings in Area of Townscape Character and those whose demolition is subject to planning control for example listed buildings are subject to this regime. This was achieved by departmental direction A11 (2) (f) those buildings whose demolition does not come within the meaning of development for planning purposes and those buildings which do. Relevant at the time of the current case were the appellant states that the dwelling was demolished in Jan 2010, The Planning (demolition – description of buildings) Direction 2009 states demolition of “any building not within an area of townscape character or an area of

village character” shall not be taken for the purposes of the 1991 Order to involve development of land.

- 8.11 The agent in paragraph 3.11 of their submission outlined that the works to demolish the dwelling and remove the rubble were carried out in January 2010 by Crawf Construction and M Toland. The applicant/agent has submitted an invoice from M Toland to Crawf Construction (Appendix 5) for lorry hire to Vale Road in January 2010. However this invoice is somewhat inconclusive in that it is no address/location specific to the application site.
- 8.12 Condition 4 of B/2003/0360/O required specific works to be carried out prior to the commencement of constructing the approved dwelling. If demolition of this type of building is not taken to involve development of land as per the 2009 Direction and as it is not expressly defined in the description of the planning permission, then the demolition of the building does not constitute development or a material start of the planning permission granted under B/2008/0174/RM.

Establishment of New Rear Boundary

- 8.13 Appendix 8 of the agent’s submission shows the approved site plan for B/2008/0174/RM, which shows the newly formed site curtilage to be defined by a post and wire fence with hedgerow and trees planted on the inside. Appendix 6 of the agent’s submission shows an aerial image of the application site showing a newly formed boundary to the rear. However, while it is acknowledged that a new post and wire fence has been erected to the rear of the site, this boundary fence does not correlate with the site boundary approved under B/2003/0360/O and B/2008/0174/RM. Dated aerial photography clearly outlines the position of the boundary fence and confirms that the fence was not erected in accordance with the planning approval. Given the works carried out have not been done in accordance with the planning approval it is the opinion of the Planning Authority that these works do not represent a commencement of planning permission B/2008/0174/RM. Incidentally, even if the fence were in the correct place, this work is de-minimus and does not constitute commencement of development.
- 8.14 The affidavit submitted by Michael O’Hara outlines the extent of the works carried out on the site during January-April 2009. There is no mention within this affidavit of the new rear boundary of the site being defined.

Building Control

- 8.15 When consulted, Building Control of Causeway Coast and Glens Borough Council confirmed via a telephone conversation that a cancellation notice was issued in January 2012 due to a failure to implement works on the site indicated that no development works requiring Building Control approval had taken place on the site by January 2012. Appendix 3 of the Agent's submission contains a copy of two Notices of approval relating to Notice of Passing of Building Regulation Plans. It is noted that this approval relates to the passing of Building Control plans and do not relate to works carried out/Building Control inspections. It is also noted that the second application was made in March 2012 which is after the application had expired.
- 8.16 It is evident that no foundations have been excavated, dug or poured in connection with the dwelling approved under B/2008/0174/RM.

Precedent

- 8.17 The agent cites LA01/2015/0396/F as precedent. This site was recommended to the Planning Committee with an opinion to refuse in May 2016 on the basis that insufficient work had taken place to constitute a material start. The Planning Committee disagreed with the recommendation which is within their remit and responsibility to do so.

Personal Circumstances

- 8.18 The agent cites hardship imposed upon the applicants by the circumstances surrounding this application site and associated planning history. Whilst the Planning Authority sympathise with the applicant's position the personal circumstances of the applicant cannot be given determining weight in a Certificate of Lawfulness application, which is required to be determined on fact and degree.

9.0 CONCLUSION

- 9.1 Having regard to the development plan and other material considerations the proposal is considered unacceptable. Refusal is recommended.
- 9.2 When considering the information available to date it is concluded that the demolition of the former building was not development at the time it was carried out, and did not constitute a material start. The access has not been broken through at the correct position and is not in accordance with the planning permission. The visibility splays have not been implemented to date. Building Control issued a cancellation notice in January 2012 for failure to implement works and the repositioning of the boundary is not in accordance with the curtilage of the site as established by the outline and reserved matters permission and in itself would be de minimus and not constitute commencement of development. It has not been demonstrated that a material start has been made, therefore the proposed dwelling cannot be lawful completed. As such the CLUD should be refused.

10 Refusal Reasons

10.1 Reasons for Refusal:

1. The Council hereby REFUSES TO CERTIFY that on 4th April 2017 the operations described in the First Schedule to this certificate in respect of the land specified in the Second Schedule to this certificate and edged in red on the plan attached to this certificate, would be lawful within the meaning of Section 170 of the Planning Act (Northern Ireland) 2011, for the following reasons:

The Council, having considered the information provided, is not satisfied that the proposed operations specified above and shown on the attached drawing No. 01 which was received on 4th April 2017 constitute a lawful start of the permission for the replacement dwelling (B/2008/0174/RM) and as such the planning permission has expired.

Site location

