

Planning Committee Report LA01/2017/1328/O	27th June 2018
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	Development Management & Enforcement Manager
Cost: (If applicable)	N/a

<u>No:</u> LA01/2017/1328/O	<u>Ward:</u> BALLYKELLY
<u>App Type:</u> Outline Planning	
<u>Address:</u> 32 Glack Road, Ballykelly	
<u>Proposal:</u> Proposed single storey detached replacement dwelling, detached garage and septic tank	
<u>Con Area:</u> n/a	<u>Valid Date:</u> 12.10.17
<u>Listed Building Grade:</u> n/a	
<u>Agent:</u> Cahal Donaghy, 525 Baranait Road, Claudy, BT47 4EF	
<u>Applicant:</u> Liam King, 11 Laburnum Road, Ballykelly, Limavady, BT49 9JW	
<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** planning permission subject to the reasons set out in section 10.

2 SITE LOCATION & DESCRIPTION

- 2.1 The site is located on Glack Road and comprises an irregular shaped plot with an existing structure and outbuildings. The northern and eastern edges of the site are defined by the Ballykelly River, the western boundary is defined by roadside planting, and the southern boundary by mature planting. Parts of the site are largely overgrown, with the remainder covered in grass.
- 2.2 The largest structure displays the characteristics of a caravan, with the metal chassis and axles visible, the external walls are painted corrugated metal and it would appear to be composed of two halves joined together. The outbuildings include a mixture of wooden sheds and garages. The largest sitting parallel to the road to the western edge of the site.
- 2.3 The character of the surrounding area is predominantly rural. There are residential dwellings to the north and west of the site. The Ballykelly River runs to the east of the site.
- 2.4 In the Northern Area Plan the site is located in the countryside, outside of any defined settlement limits. There are no specific zonings or designations covering the site.

3 RELEVANT HISTORY

B/2003/0380/F

Erection of replacement bungalow.

32 Glack Road, Ballykelly, Limavady.

Permission Granted: 17/10/2003

B/1974/0074
Bungalow
Glack, Limavady
Permission Granted

- 3.1 The planning history on the site shows a previous approval on the site for a replacement bungalow. This permission has long since lapsed and the policy context has now changed. The proposal has been assessed in relation to current policy for development in the countryside and is not considered acceptable.

4 THE APPLICATION

- 4.1 Outline Planning Permission is sought for a proposed single storey detached replacement dwelling, detached garage and septic tank.

5 PUBLICITY & CONSULTATIONS

5.1 External

Neighbours: There are no objections to the proposal

5.2 Internal

Environmental Health Department: No objections

NI Water: No objections

DAERA Water Management Unit: No objections

DAERA Natural Environment Division: Biodiversity Checklist required

DFI Roads: Revised P1 form and Location Plan were requested

DFI Rivers: No objections

Shared Environmental Service: No objections

Loughs Agency: No objections

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 Northern Area Plan 2016

Strategic Planning Policy Statement (SPPS)

Planning Policy Statement 21: Sustainable Development in the Countryside

Planning Policy Statement 2: Natural Heritage

Planning Policy Statement 3: Access, Movement and Parking

Planning Policy Statement 15: Planning and Flood Risk

8.0 CONSIDERATIONS & ASSESSMENT

8.1 The main considerations in the determination of this application relate to: principle of development; integration; rural character; flooding; natural heritage; and road safety.

Principle of Development

8.2 The SPPS and Policy CTY1 of PPS 21 identify a number of instances when an individual dwelling house will be granted permission. 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, or it is otherwise allocated for development in a development plan.

Planning permission will be granted for an individual dwelling house in the countryside in the following cases:

- a dwelling sited within an existing cluster of buildings in accordance with Policy CTY 2a;
- a replacement dwelling in accordance with Policy CTY 3;
- a dwelling based on special personal or domestic circumstances in accordance with Policy CTY 6;
- a dwelling to meet the essential needs of a non-agricultural business enterprise in accordance with Policy CTY 7;
- the development of a small gap site within an otherwise substantial and continuously built up frontage in accordance with Policy CTY 8; or
- a dwelling on a farm in accordance with Policy CTY 10.

8.3 The application was submitted as an outline application for a proposed single storey detached replacement dwelling, detached garage and septic tank. Policy CTY 3 is therefore considered.

8.4 Policy CTY3 of PPS21 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. CTY3 also states that for the purposes of this policy all references to “dwellings” will include buildings previously used as dwellings.

8.5 Buildings designed and used for agricultural purposes, such as sheds or stores, and buildings of a temporary construction will not however be eligible for replacement under this policy.

- 8.6 The temporary structure on the site falls within the definition of a caravan as outlined in the Caravans Act (Northern Ireland) 2011 in that “The structure would be capable of being moved from one place to another by being either towed or transported by trailer.” The proposal is contrary to policy CTY 3 as the structure on the site is of a temporary construction and is therefore not eligible for replacement under the provisions of CTY 3. As the proposal is not eligible for replacement under this policy further consideration of the essential characteristics of a dwelling or the additional criteria is not required.
- 8.7 Of relevance to this case is Planning Appeals decision 2013/A0074, 30A Ballygowan Road, Hillsborough. This appeal was in respect of a one and a half storey replacement dwelling in lieu of prefabricated dwelling to improve standards of human habitation. This appeal was dismissed and the Commissioner stated that ‘I am not persuaded that a caravan, which for the purposes of the policy is of temporary construction, can benefit from the policy provisions of CTY 3, notwithstanding how long it has occupied a site or its means of attachment to the ground.’
- 8.8 The decision also states that ‘the wording of CTY 3 in relation to the building to be replaced exhibiting the essential characteristics of a dwelling and as a minimum having all the external walls intact suggests that to qualify, the structure must be a building with conventionally built structural walls rather than be comprised of prefabricated shell structures such as caravans. This is reinforced by the distinction throughout PPS 21 between dwellings and caravans / mobile homes.’
- 8.9 A second Planning Appeal decision 2013/A0047, No. 4 Milltown Road, Lislea, Camlough, Newry, is also relevant and further emphasises the distinction between buildings and temporary structures. This appeal was in respect of the replacement of a mobile home with a new dwelling house. This appeal was also dismissed and the Commissioner stated that the test in Policy CTY 3 is whether or not there is a building to be replaced and if it exhibits the essential characteristics of a dwelling. The appeal proposal involved not a building but a mobile home which is of temporary construction and does not exhibit the essential characteristics of a dwelling. The Commissioner therefore did not consider that the mobile home is a replacement opportunity which satisfies the requirements of Policy CTY 3.

8.10 The temporary structure on the site does not have external structural walls and the metal chassis and axle was visible at the time of the site inspection. This distinguishes the temporary structure from a building which may be eligible for replacement under Policy CTY 3.

8.11 No further information was submitted with this application and the proposal would not fall within any of the other instances for a dwelling in the countryside as identified in Policy CTY 1. The proposal is contrary to Policy CTY 1 and CTY 3.

Integration

8.12 Policy CTY 1 of PPS 21 and paragraph 6.70 of the SPPS state that all proposals must be sited and designed to integrate sympathetically with their surroundings.

8.13 A new dwelling on the site would not be a prominent feature in the landscape as there are existing natural boundaries to the site which would allow for the integration of a suitably designed single storey dwelling. Notwithstanding this, the principle of a dwelling on the site remains unacceptable. The proposal complies with the SPPS and Policy CTY 13 of PPS 21.

Rural Character

8.14 Planning permission will be granted for a building in the countryside where it does not cause a detrimental change to, or further erode the rural character of an area. A dwelling on this site would not have a detrimental impact on the rural character of the surrounding area, provided it was of a suitable scale and design. Notwithstanding this, the principle of a dwelling on the site remains unacceptable. The proposal complies with the SPPS and Policy CTY 14 of PPS 21.

Flooding

8.15 As the site is adjacent to a watercourse and is affected by surface water flooding DFI Rivers was consulted. DFI Rivers advised that under paragraph 6.32 of the policy a 5m maintenance strip is required unless the watercourse can be maintained from the opposite bank by agreement with the landowner. This should be marked on a drawing and protected from any impediments. In such case a planning informative is recommended. As the site is located partly within an area affected by surface water flooding it is the developer's responsibility to assess the flood risk and drainage impact and to mitigate the risk to the development and any impacts beyond the site.

Natural Heritage

8.16 In a consultation response from DAERA – Natural Environment Division, it was noted from aerial imagery that the site and the surrounding landscape is optimal habitat for a number of priority and protected species. The site is optimal habitat for foraging and commuting bats due to the close proximity of a river and natural linear features. There is also adequate vegetative cover and foraging opportunities along the western boundary for otters to have established habitat. NED recommends that the NI Biodiversity Checklist should be used to establish if any ecological surveys are required for a complete application. As the principle of development was not considered acceptable no further information was requested. The proposal is therefore contrary to the SPPS and PPS 2.

Road Safety

8.17 Further to a consultation response, DFI Roads have requested a revised location plan and an amended P1 Form. An amended location plan is required to indicate the required visibility splays from the recommended access point. This will require the removal of hedges either side of the access. The P1 form requires an amended Q12 to read 'alterations to existing access'. As the principle of development was not considered acceptable no further information was requested. The proposal is contrary to Policy AMP 2 of PPS 3.

Habitats Regulations Assessment

8.18 This planning application was considered in light of the assessment requirements of Regulation 43 (1) of the Conservation (Natural Habitats, etc) Regulations (Northern Ireland) 1995 (as amended) by Shared Environmental Service on behalf of Causeway Coast and Glens Borough Council which is the competent authority responsible for authorising the project and any assessment of it required by the Regulations. Having considered the nature, scale, timing, duration and location of the project it is concluded that, provided that recommended mitigation is conditioned in any planning approval, the proposal will not have an adverse effect on site integrity of any European site.

9.0 CONCLUSION

9.1 The proposal is considered unacceptable in this location having regard to the Northern Area Plan 2016 and other material considerations. The proposal does not accord with the principle of a

dwelling in the countryside as set out by Policy CTY 1 of PPS 21 including having regard to the specific policy for replacement dwellings as outlined in Policy CTY 3. The applicant has failed to demonstrate that the proposal would not result in an unacceptable impact on habitats, species or features of Natural Heritage Importance and is contrary to PPS 2. It has not been demonstrated that the proposal would not prejudice road safety therefore the proposal would be contrary to Policy AMP 2 of PPS 3. Refusal is recommended.

10 REFUSAL REASONS

1. The proposal is contrary to paragraph 6.73 of the Strategic Planning Policy Statement for Northern Ireland and Policies CTY1 and CTY3 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that the building is of a temporary construction and is not eligible for replacement under this policy.
2. The applicant has failed to demonstrate that the proposal would not result in an unacceptable adverse impact on habitats, species or features of Natural Heritage Importance in accordance with Policies NH 2 and NH 5 of Planning Policy Statement 2 – Natural Heritage.
3. The applicant has failed to demonstrate that the proposal would not prejudice road safety in accordance with Policy AMP 2 of Planning Policy Statement 3 – Access, Movement and Parking.

Site Location Map

