

Planning Committee Report Item – Agenda Item 5.24 LA01/2016/1157/F – 36 Ballyrogan Road, Garvagh	28th February 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	Principal Planning Officer
Cost: (If applicable)	N/a

**36 Ballyrogan Road
Garvagh**

**LA01/2016/1157/F
Full Planning**

28th February 2018

<u>App No:</u>	LA01/2016/1157/F	<u>Ward:</u>	Garvagh
<u>App Type:</u>	Full Planning		
<u>Address:</u>	36 Ballyrogan Road, Garvagh		
<u>Proposal:</u>	Proposed change of house and garage type with repositioning of dwelling and garage with increased curtilage, approved under extant planning approval C/2005/1272/F. Revocation of previous planning approval and removal of existing strip foundation laid under planning approval C/2005/1272/F.		
<u>Con Area:</u>	N/A	<u>Valid Date:</u>	22 September 2016
<u>Listed Building Grade:</u>	N/A	<u>Target Date:</u>	
Applicant:	Mr Michael O'Kane, 129 Craigmore Road, Ringsend.		
Agent:	Design and Detail, 5 Ballylame Road, Garvagh.		

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

2 SITE LOCATION & DESCRIPTION

- 2.1 The subject site is located along an existing private lane on the western side of Ballyrogan Road. The site comprises agricultural land, with the foundations of a garage at the north-west corner. The land falls from east to west. The western boundary is undefined; trees are located to the north; hedge is located to the east.
- 2.2 The area is open landscape, essentially rural in character, characterised by single storey / one-and-a-half dwellings. 38

Ballyrogan Road (to the south) is a single storey detached dwelling finished in smooth render and flat black roof tiles. 34 Ballyrogan Road (to the north-east) is a one-and-a-half storey detached dwelling finished in smooth render and flat black roof tiles. Localised views from the private laneway.

- 2.3 The site is located within countryside, as per the Northern Area Plan 2016.

3 RELEVANT HISTORY

C/2005/1272/F - New Dwelling and Garage at lands Adjacent to 44 Ballyrogan Road, Garvagh. Approved 18 June 2006

C/2006/0833/F - Proposed change of house type to previously approved application at lands Adjacent to 44 Ballyrogan Road, Garvagh – Approved 14 March 2007

C/2011/0206/F - Change of house type approved under previous application and erection of detached garage at lands Adjacent to 44 Ballyrogan Road Garvagh BT51 5EZ. Approved 21 June 2011

4 THE APPLICATION

- 4.1 Planning permission is sought for the proposed change of house and garage type with repositioning of dwelling and garage with increased curtilage, approved under extant planning approval C/2005/1272/F. Revocation of previous planning approval and removal of existing strip foundation laid under planning approval C/2005/1272/F.
- 4.2 During the processing of the application, the applicant's agent submitted new information and P1 forms, changing the proposal. The revised description seeks to establish a commencement to approval C/2005/1272/F, rather than approval C/2011/0206/F (as previously stated); to revoke approval C/2005/1272/F; and to reposition both the dwelling and garage on a new site adjacent to the previously approved site.

- 4.3 The potential impact of this proposal on Special Protection Areas, Special Areas of Conservation and Ramsar sites has been assessed in accordance with the requirements of Regulation 43 (1) of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended). The proposal would not be likely to have a significant effect on the conservation objectives/features of any SAC or any other European site.

5 PUBLICITY & CONSULTATIONS

External

- 5.1 **Neighbours:** There is one representation (letter of support) for this proposal.

Internal

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

NIEA: Has no objection to the proposal.

NI Water: Has no objection to the proposal.

Environmental Health: Has no objection to the proposal.

Historic Environment Division: Has no objection to the proposal.

Rivers Agency: 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 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 RELEVANT POLICIES & GUIDANCE

The Northern Area Plan 2016

Strategic Planning Policy Statement (SPPS)

PPS2: Natural Heritage

PPS 3: Access, Movement and Parking

PPS 21: Sustainable Development in the Countryside

Supplementary Planning Guidance

Building On Tradition - A Sustainable Design Guide for the Northern Ireland Countryside

8 CONSIDERATIONS & ASSESSMENT

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

Planning Policy

- 8.2 The site is located within the rural area and outside any settlement limit as defined in the Northern Area Plan.
- 8.3 The principle of this development proposed must be considered having regard to the PPS policy documents specified above and the supplementary guidance.

Principle of Development

8.4 As the site is located within the rural area, Planning Policy Statement 21 applies to the proposal. Policy CTY1 of PPS 21 states that there is a range of types of development which are considered to be acceptable in principle in the countryside. It states that planning permission will be granted for an individual dwelling house in the countryside in six 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.

8.5 It goes on to state that 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. The proposal, as submitted, does not fall under any of the aforementioned six criteria set out in the paragraph above.

8.6 However, the applicant has submitted information to demonstrate a material start has been made to planning approval C/2005/1272/F. This approval expired on 17 June 2011. The works on site appear to be in the location that were approved. Aerial photography shows that no works had taken place on site at 08 April 2011, but some works had taken place on 17 May 2013. As such, aerial photography is inconclusive. Appropriate weight is therefore attached to the Building Control letters dated 11 August 2016 and 21 April 2017, which state that garage foundations were inspected on site on 15 June 2011. As such, on balance, it appears that a material start has been made to approval C/2005/1272/F within the 5 year time

limit. There is therefore an extant and live planning permission on the site approved under C/2005/1272/F.

- 8.7 The applicant now wishes to relocate this approval to a more preferable site due to the existing ground conditions on the approved site, and the costs involved in developing it. The proposed site is located approximately 50m to the south-east of the previously approved location. While the current application site includes the extent of the previous site (ref C/2005/1272/F), the new proposed footprint is physically removed from it.
- 8.8 One means suggested by the agent to achieve this, is to revoke the extant permission in lieu of this proposal. Section 68 of the Planning Act 2011 allows the Council carry out “Revocation or modification of planning permission by council”. It is set out in Section 68 (1) which says:
- 68—(1) If it appears to a council, having regard to the local development plan and to any other material considerations, that it is expedient to revoke or modify any permission to develop land granted on an application made under this Part or on an appeal under section 143, the council may, subject to subsections (2) to (4), by order revoke or modify the permission to such extent as (having regard to those matters) it considers expedient.***
- 8.9 Revocation is rarely used and should only when it is expedient to do so. In this case, the applicant is seeking revocation to develop a more preferable site as the costs would be lower. This is not expedient in the public interest. There are also costs to the Council should revocation occur due to the legal process involved in doing so, and the significant administration required.
- 8.10 The applicant is also making the case that revocation is required because the approved dwelling is subject to flooding from the undesignated watercourse at the eastern boundary of the site of the approved dwelling. However, DFI Rivers has advised the Planning Department that landowners are the riparians and are responsible for the maintenance of the watercourse. DFI Rivers further advised that the issues are not insurmountable and that while the policy requires a 5m maintenance strip, in the case of this single dwelling it would be

achievable to maintain the watercourse with less access and without going to the opposite bank.

- 8.11 Other proposed remedies such as removal of the foundation would not satisfactorily achieve the objective of definitively preventing progression of construction on the initial approval. This in turn, would result in the potential for two dwellings rather than one. The Agent has cited appeal 2017/A0013 at Hillsborough Road, Hillsborough. In this case the Commissioner reasoned that the potential for a second dwelling could be prevented by attaching a planning condition to require the digging up of the foundations for the first dwelling. This, he argues, would have the effect of spending that planning approval so it could not be implemented again. However, the Planning Department do not agree that this would be a sufficiently robust mechanism to prevent the development of two dwellings.
- 8.12 The proposal does not meet any of the criteria set out in CTY1, and the applicant has not presented any overriding reasons why that development is essential in this location and why it could not be located in a settlement. The principle of this development is unacceptable.

Design

- 8.13 The design of the proposal is modest and is considered acceptable in this location. Although there is a substantial garage proposed, on balance, given the limited views of the site, this is also considered acceptable at this site. The proposal complies with policies CTY 13 & 14 of PPS21 and will not have an unacceptable impact on rural character.

Other Matters

- 8.14 The submitted letter of support draws parallels with another approval for new dwelling and garage as change of house type over the top of previous approval C/2007/1103/RM at 330m North of 242 Windyhill Road Coleraine (ref: LA01/2015/0261/F). However, LA01/2015/0261/F is not comparable to the current proposal, as it LA01/2015/0261/F was sited on the footprint of the previous approval C/2007/1103/RM).

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. It fails to meet the principle policy requirements for a dwelling in the countryside of Policy CTY1 of PPS 21. Revocation of the initial approval is not considered expedient while other mechanisms would fail to prevent the development of two dwellings. Refusal is recommended.

10 REASONS FOR REFUSAL

1. The proposal is contrary to paragraph 6.73 of the Strategic Planning Policy Statement for NI Policy CTY1 of Planning Policy Statement 21: Sustainable Development in the Countryside in that the proposal is not a type of development which in principle is considered to be acceptable in the countryside and there are no overriding reasons why this development is essential and could not be located in a settlement.

Site location



LA01/2016/1157

Revision	Description	Date	By
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