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<b>Appeal Reference:</b>	2017/A0008
<b>Appeal by:</b>	Katherine Hunter
<b>Appeal against:</b>	The refusal of full planning permission
<b>Proposed Development:</b>	Amended House Type (approved under C/2013/0112/F) – Retention of as built dwelling with proposed alterations to include height reduction of roofs, ground works, alteration to fenestration and front balcony and addition of air source heat pump.
<b>Location:</b>	31 Prospect Road, Portstewart
<b>Planning Authority:</b>	Causeway Coasts and Glens Borough Council
<b>Application Reference:</b>	LA01/2016/1266/F
<b>Procedure:</b>	Hearing on 31 August 2017
<b>Decision by:</b>	Commissioner Pamela O'Donnell, dated 30 January 2018

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## Decision

1. The appeal is allowed and full planning permission is granted subject to the conditions set out below.

## Claim for Costs

2. A claim for costs was made by the Appellant against Causeway Coast & Glens Borough Council. This claim is the subject of a separate decision.

## Preliminary Points

3. Objectors to the proposal alleged that the description of the proposal was inaccurate; that the drawings provided were insufficient to adequately describe the proposal and that the appeal site had been raised by some 2m.
4. Article 3 (2) and (3) of the Planning (General Development Procedure) Order (NI) 2015 (GDPO) specify that an application for planning permission shall contain a written description of the development to which it relates and that it must be accompanied by a plan which identifies the land concerned and any other plans and drawings necessary to describe the development the subject of the application.
5. The application was submitted as described above. The 1:1250 red line site location plan submitted with the application identified the land to which the proposal relates. Other accompanying information in the proposal included scaled floor plans and elevations, contextual elevations and a block plan, contextual overlays and overlays of comparative elevations with comparative site plans,

overlays of floor plans and a drawing of viewing angles from the second floor balcony. Contextual computer generated visualizations of the proposed development were also submitted for consideration.

6. The written description of the proposal does not refer to the proposed floor space extension at basement (or lower ground floor) level. However, given that the description uses the words 'to include' and that the plans submitted clearly detail this area as part of the proposal, I am satisfied that the above legislative requirements have been met. Given this and that the Objectors were aware of the overall extent of the proposal, I am also satisfied that no prejudice has arisen as a result of its description. No topographical survey was submitted to corroborate the claim that the site had been raised by 2m. Whilst conventional section drawings were not submitted for consideration, contextual elevations were and they detail levels across the site. Having reviewed the section and spot levels from the approved drawings relating to the extant planning permission on the site (C/2013/0112/F), they show that site levels increase from the road to the rear boundary by over 3m. Even though some parts of the rear garden area are now shown to have increased in level since that approval in 2013, the levels provided with the appeal drawings are not, in my opinion, significantly different to those on the approved drawings. The detailed plans provided were accepted by the Council and no additional technical drawings were requested to inform their decision. Like the Council, I too am satisfied that sufficient information has been provided to enable me to reach a reasoned and informed decision on the appeal in accordance with the legislative requirements. The plans submitted with the appeal have therefore been taken into account in my overall assessment in combination with my own on site-observations.
7. Some Objectors raised concern regarding the accuracy of the Neighbour Notification procedure. Article 8 of the GDPO relates to the giving of notice of applications for planning permission and appeals. Article 8 (1) (b) requires the Council to serve notice of the application to any identified occupier on neighbouring land. Having reviewed the relevant details, I am satisfied that the Council has carried out its statutory duty regarding the notification of neighbours in accordance with the legislation.

## **Reasoning**

8. The main issue in the appeal is whether the proposal would result in unacceptable damage to the local character, environmental quality and residential amenity of the area.
9. Section 6 (4) of the Planning Act 2011 states that determination under this Act must be made in accordance with the plan, unless material considerations indicate otherwise. In this case, the relevant statutory plan is the Northern Area Plan 2016 (NAP). The appeal site is located within the development limit for Portstewart as designated in the NAP and is unzoned land. There are no relevant designations or policies within the Plan pertinent to the appeal site or the appeal proposal. The other material considerations in the appeal are discussed below.
10. The Strategic Planning Policy Statement for Northern Ireland 2015 (SPPS) provides advice regarding housing in settlements to planning authorities engaged in preparing new area plans. Its provisions do not conflict with extant regional

policy in respect of proposals for dwellings within settlements. Accordingly, the relevant policy context is provided by Planning Policy Statement 7 'Quality Residential Environments' (PPS7). Supplementary guidance contained in 'Creating Places - Achieving Quality in Residential Developments' (CP) is also material to the consideration of the appeal.

11. Policy QD1 of PPS7 states that planning permission will only be granted for new residential development where it is demonstrated that the proposal will create a quality and sustainable residential environment. It adds that all proposals for residential development will be expected to conform to nine criteria. The main objections to the appeal proposal are on the grounds that it would fail to comply with criteria (a), (g) and (h) of Policy QD1.
12. Criterion (a) requires proposals for residential development to respect the surrounding context. It states that development proposals should be "*appropriate to the character and topography of the site in terms of layout, scale, proportions, massing and the appearance of buildings, structures and landscaped and hard surfaced areas*". Criterion (g) requires the design of the development to draw upon the best local traditions of form, materials and detailing. Criterion (h) seeks to ensure that proposals do not create conflict with adjacent land uses or give rise to unacceptable adverse effect on existing or proposed properties in terms of overlooking, loss of light, overshadowing, noise or other disturbance.
13. No 31 is located along the eastern side of Prospect Road, a well established residential area. The site comprises a modern three storey detached flat roof dwelling currently under construction. The dwelling is abutted by housing on three sides. No 29 Prospect Road is a two storey detached dwelling finished in wet dash with a slate hipped roof, bay windows and high chimneys. No 33 Prospect Road is a two-and-a-half storey semi detached residential block finished in smooth render with weather boarding. It has a saw-tooth roof which is finished in flat black tiles. No 16 Seaview Drive North, a detached dwelling finished in dash and smooth render, is located to the rear of the site and its grade level is higher than that of No 31. The surrounding area is made up of a mix of dwelling types of differing heights, designs and finishes, although predominantly detached dwellings of two storeys in height.
14. The appeal seeks permission for an amended house type to that which was approved under planning application C/2013/0112/F. It seeks to retain the dwelling as built and proposes further amendments to include the reduction of roof heights, ground works, alterations to the fenestration and front balcony and the addition of an air source heat pump.
15. Planning application C/2013/0112/F was in respect of a replacement dwelling with integral garage. It was approved in May 2013 and remains extant. The Council accepted that the extant permission represented a fallback position in the appeal. However, they considered it to be a poor planning decision and, because of this, argued that only limited weight should be given to it in the consideration of the appeal proposal. They relied on *Gambone v Secretary of State for Communities and Local Government (2014) EWHC 952* to support their position. This and the issue of 'fallback' are considered below.

16. I was told that the Appellant has the funds available to revert to the approved development and that she means to carry out the modifications in the event of a refusal. To corroborate this statement, I was furnished with a letter from Investec, a Wealth and Investment Company confirming that the Appellant has access to readily available and significant sums to oversee the costs associated with implementing the approved development. Figures were tabled at the Hearing and I was informed that sufficient funds were also available to cover the costs of demolition and new build in accordance with the approved plans, if that course of action were necessary. I was advised that additional detailed financial accounts could become available, if required. As referred to above, the Council accepted that the extant approval represents a fallback position and that it could be implemented. The evidence indicates that the Appellant has no other permanent residence. She is currently living with relatives and her belongings are in storage. She has also been unable to complete and occupy the dwelling at No 31 due to the ongoing planning process for a considerable period of time. Given these circumstances and the financial evidence provided which was not persuasively rebutted, I am satisfied that there is a realistic possibility of reversion to the approved development, should the appeal fail. I therefore accept that there is a genuine fallback in the appeal.
17. While the Council considers the previous approval to be a poor planning decision with which I agree, and feels it is entitled to distance itself from it because it was taken by Central Government, the situation remains that the Appellant can lawfully enact her fallback position and revert to the previous permission. The fallback position must therefore be given significant weight in the determination of the appeal and any harm associated with it taken into account in the overall planning judgment. Accordingly, I must disagree with the stance of the Council and the Objectors that only limited weight be placed on it and I find nothing in the case law referred to or in what was discussed at the Hearing to make me depart from this conclusion. In any event, it was open to the Council to revoke the extant permission if it was of the strong view that it would cause demonstrable harm and I have not been made aware of any such attempt at revocation. In finding there to be a genuine fallback in this case, it falls to me to compare the harm that would be caused by the appeal proposal with the harm likely to be caused if the fallback opportunity were taken up on the character of the area and on residential amenity. My consideration must be confined to this comparison.
18. The Council provided a schedule of the main differences between the appeal proposal and the extant approval and it is noted that the appeal proposal is different to that which is already built on the site. My reading and scaling of the submitted plans would broadly correlate with the information provided within this schedule.
19. The overall height above Ordinance Datum of the appeal proposal would be some 18cm higher than the building approved. It would be set back in the site some 70cm further and therefore closer to the boundary with No 16 Seaview Drive North. The appeal proposal would be between 10-20cm closer to the northern site boundary with No 29 and around 10cm closer to the southern site boundary with No 33. The floor space at ground floor level would increase to provide for a larger basement area. Ground levels at the front of the site have been reduced by around 50cm while those to the rear have been increased by around 30cm. While finished floor levels would be reduced relative to those of the extant approval at

ground floor level, those at the upper levels would increase. The materials proposed are generally the same as those that have been approved, although obscured glazing would now be inserted in some of the windows.

20. The main differences in the treatment of the elevations are as follows –
- Rear/Eastern elevation - removal of parapet wall and patio doors and reconfiguration of fenestration at second floor level with the introduction of obscured glass to an en suite;
  - Side/Northern elevation – removal of three windows – the four remaining apertures would not serve any habitable rooms such as a lounge area, as with the extant approval. The proposed first floor window would also be finished in obscured glass and the proposed ground floor window and door would be screened by a new fence;
  - Side/Southern elevation – the pattern of fenestration would change. This would include an increase in the size of the garden room window but also involves the removal of a full height window. There would be an additional two windows introduced at second floor level, but they would be finished in obscured glass. The height of the screen wall to the garden room would increase by some 0.8m, and
  - Western/Front elevation – the finished floor level of the balconies would be around 0.38m higher than those approved and a new wall and ground works are proposed to screen the development at street level.
21. In general terms and relative to the extant approval, the appeal proposal would be located further to the east of the site and it would sit marginally closer to the northern and southern site boundaries. It would also be elevated some 18cm higher than the approved dwelling. In addition, some improvements are proposed, including the removal and/or repositioning of windows in some of the elevations and the introduction of obscured glass. The proposed roof profile, devoid of projecting solar panels, would be less fussy than that which was approved and the proposed set back would better reflect the established building line. Whilst the proposal would be higher than neighbouring dwellings, it would be only 18cm higher than the permitted height and, in my opinion, this difference would not be significant, especially when read as part of the wider townscape setting. In this context, I am not persuaded that the proposal would “tower over” the neighbouring properties, as suggested. In respect of the increase at basement level, this area is to the rear of the site, so, while it would add to the overall size of the proposal, it would not significantly contribute to its scale and mass from public viewpoints. The wall to the front, as proposed, would help to screen the proposal from along Prospect Road and the changes to finished floor levels would not be readily appreciable from those approved in the streetscape. Accordingly, I do not consider the differences to be so significant that they would render the appeal proposal “top-heavy” and visually incongruous from the views identified. Having undertaken a detailed site visit and carefully reviewed the drawings provided, I am of the opinion that the scale, proportions, massing, layout and overall appearance of the proposed dwelling would not be significantly different to that which was approved from public viewpoints. The materials and finishes proposed would be similar, and the overall detailing comparable. Taking account of the existing ground levels across the site, I am broadly satisfied that the overall difference between the extant approval and the proposal would not be

of such magnitude as to cause any additional unacceptable dominance or overdevelopment of the site.

22. While two storey detached dwellings predominate, there is no distinctive character to Prospect Road and its surroundings given the overall mix of dwelling types that exist which includes those of contemporary design, broadly akin to the appeal proposal. The contextual information provided by the Appellant reinforces this conclusion. Only glimpse type views of the proposal would be available when travelling along Seaview Drive North and it would not be overly conspicuous from the Strand as it would read as part of the wider panorama of the surrounding townscape. Whilst three storey buildings are not predominant, some are evident, thus the appeal proposal would not be an alien feature in the area. In any event, the extant approval was for a three storey dwelling. In the evidential context before me, and for the reasons stated, I am satisfied that the proposal would have no more detrimental effect or have a visual impact significantly greater than the extant approval. In this context, I find that the proposal accords with criteria (a) and (g) of Policy QD1. I now turn to consider criterion (h) of policy QD1.
23. The extant approval permitted balconies on first (or upper ground floor) and second floor level of the dwelling. They would allow for views towards No 33. The main difference between the approval and the appeal proposal is an increase in the floor height of the balconies by around 38cm. In order to help illustrate both scenarios, a 'study of viewing angles' drawing was provided. It shows the angles of view from the second floor balcony. Having undertaken a site visit from within No 33 and from within the building on the appeal site, I consider that the drawing provided broadly reflects the difference in views available and whilst a degree of overlooking would occur, I find that the appeal proposal would have no more detrimental effect than that which was approved. The proposed first floor balcony would be located in a similar location to that which was approved and based on my on-site observations, I am satisfied that it would not lead to any unacceptable overlooking of No 33. I therefore find the overall difference in floor levels to be largely insignificant in this matter. This finding also takes into account the increased setback of the appeal proposal and its closer proximity to the party boundary. The flash balcony of the master bedroom, as now proposed, would principally afford views out towards the sea due to its orientation. Despite its proximity, given its limited dimensions it would only afford restricted and narrow angled views towards No 33 and one would have to lean out significantly in order to overlook the neighbouring property. For these reasons, I am satisfied that the proposed flash balcony would not lead to any unacceptable overlooking to the detriment of residential amenity.
24. The extant approval permitted seven windows on the southern elevation and no obscured glass was proposed. As regards the appeal proposal, of the three ground floor (or lower ground floor) windows proposed, two would be located in similar locations to those of the extant permission with one of the windows smaller in size. None of the proposed windows at this level would overlook any of the windows in the side elevation of No 33 and the outlook from the proposed curved bedroom window would be screened by the existing boundary wall. At first floor level, the proposed windows would be in the same general location as those in the extant approval and the additional glazing around the garden room would be largely offset by the removal of a full height window. In any event, during my site visit, I found that only limited views into the rear amenity space of Nos 33 and

33A were afforded from the garden room due to the angle of view available and the intervening boundary wall. These views would not be unacceptable in an urban context, and I note that the height of the garden room would not be significantly different to that which was approved. While there would be two additional windows introduced at second floor level, they would be finished in obscured glass and would be narrow and top hung. Given that the obscured glass can be secured by condition and the acute angle of view that would be available, I am satisfied that any overlooking from these windows would not be unacceptable. In comparison with the approval, the inclusion of obscured glass combined with the relocation of the remaining apertures would reduce the likelihood of any unacceptable overlooking from the east or rear elevation. For the reasons stated, I am satisfied that despite the set-back and closeness to the party boundary, the appeal proposal would have no more detrimental effect on the amenity of the residents of Nos 33, 33A & 35 than that which was permitted.

25. The extant approval permitted seven windows along the northern elevation towards No 29 Prospect Road. In addition, no obscured glazing was proposed despite one of the windows servicing a habitable room (lounge area). The appeal proposal, by contrast, proposes only four apertures including a door. The ground floor window and door would be screened and the proposed blank spandrel panel would be in the same general location as a window in the extant approval. The proposed first floor window would be in obscured glass. The second floor window would be in the same general location as that approved and whilst it would serve a bedroom, it would be narrow and the limited angle of view available from same would minimise any overlooking. All in all, I consider that this elevation presents an improved relationship with No 29 despite the basement extension and the closer proximity to the boundary. Furthermore, views from the rear windows of the appeal proposal towards the small patio area directly to the rear of No 29 would be very acute and thus not unacceptable. Whilst the appeal proposal would allow for a view from the first floor rear bedroom window into the rear decking area of No 29, this would be an oblique view and again, not unacceptable. In any event, the extant approval had a larger aperture, namely patio doors in the same general location. Any overlooking from the second floor level of the proposal would be reduced by the introduction of obscured glass and the repositioning of windows. The extant approval, in comparison, would have created overlooking from this level into the decked area due to the location of the permitted windows. Given its distance away and my on-site observations, I find that No 27 Prospect Road would not be overlooked by the appeal proposal.
26. The separation distance between the extant approval, the appeal proposal and No 16 Seaview Drive North would fall within the guidance specified in CP. This is despite the appeal proposal edging some 70cm closer to the common boundary. An intervening boundary wall and fence is proposed which would help to screen the appeal proposal. Given the difference in levels and the position of the wall and fence relative to the path of the sun, they would not create unacceptable overshadowing. Furthermore, the proposed fenestration at second floor level would be reduced overall, with one window finished in obscured glass. The proposed level of glazing at first floor level would be broadly similar to that which was approved, although the patio doors would be removed. For these reasons, I am satisfied that the impact of the appeal proposal would have slightly less detrimental effect on amenity than the extant approval on the residents of Seaview Drive North despite it being closer. As regards the potential for

overlooking from the outdoor patio area at the rear of the proposal, I am satisfied that this would be largely comparable to the impact from the extant approval given the details provided and based on my on-site observations. In light of the orientation of the views from the appeal proposal and the separation distances involved, I am satisfied that there would be no overlooking of the private amenity areas associated with the properties opposite the site.

27. Concern was also expressed in respect of loss of light and overshadowing. However, as the overall size and scale of the appeal proposal would not be significantly greater than the building that has permission and given the path of the sun, I am satisfied that there would be no discernible difference to the availability of daylight to surrounding residents as a result. Appeal decision 2016/A0008 is distinguishable to the circumstances before me as there was no fallback position to consider and compare in that case. In any event, each application must be determined on its own merits and in its own evidential context and in this case the extant approval for a three storey dwelling has already set the precedent for a building of that approximate height on the site.
28. For the reasons stated, I consider that the appeal proposal would have less or no more detrimental effect on residential amenity when compared with the extant approval. In this context, the proposal does not offend criterion (h) of Policy QD1. The reason for refusal has not therefore been sustained.
29. As regards the expressed concerns around the practicality and feasibility of the proposal, it would not be in the Appellant's interest to propose a development that could not be realised from a technical perspective. Furthermore, this appeal is not the vehicle to decide whether or not the development would be safe from a Health and Safety perspective. It would be for the Appellant to ensure that the entire development, as proposed, is structurally sound and that it would not compromise the integrity of any retaining structures. Though undertaken at risk, the legislation allows for the submission of retrospective planning applications.
30. It is noted that a lift shaft is proposed, but no actual lift. If a lift were to be installed in future and this was to materially affect the external appearance of the roof of the building, then separate planning permission would be required. Similarly, separate planning permission would be required to change the dwelling to apartments. It is not proposed to use the rear return roof as a balcony as part of the appeal proposal as there is no aperture to provide access to this area and the roof would have no protection around its perimeter. The alleged negative impact on property values was not supported by documentary evidence to substantiate this claim. Limited weight is therefore placed on this objection. As regards site drainage, there is no objection from the competent authorities on this issue. Given their position and the lack of compelling evidence to demonstrate that the appeal proposal would directly lead to a drainage problem, I place limited weight on this objection also. I am not persuaded that the noise, general disturbance or odour generated around bin storage in connection with a single dwelling would be unacceptable. One Objector made reference to policies within the Planning Strategy for Rural Northern Ireland. However, those policies are not of any relevance to the appeal proposal.
31. The Objectors referred to a challenged decision regarding an approval for a hotel on the coast, but as no details were submitted for consideration, I cannot



comment on whether that case is similar to this. In any event, I note that the Council indicated that the hotel case was distinguishable. Rights under the European Convention on Human Rights are qualified and the legislation clearly envisages that a balance be struck between the interests of individuals and those of society as a whole. I am satisfied that the approval of this appeal represents a fair, reasonable and proportionate response to the facts of this case.

32. The Objectors also suggested a number of amendments to the proposal including the redesign of the second floor. However, this suggestion ignores the fallback position. In any event, the appeal is in respect of full planning permission with a full suite of drawings provided for consideration and I have found the proposal acceptable in the light of the particular circumstances of the case. None of the objections, either individually or cumulatively, would warrant the dismissal of the appeal. As the reason for refusal has not been sustained, the appeal succeeds. The rationale and need for conditions is discussed below.
33. In the interest of road safety, the permanent retention of visibility splays is necessary. The installation of the air source heat pump and acoustic enclosure would be acceptable provided they operate within accepted industry noise standards. This can be controlled by the imposition of planning conditions. References to any specific manufacturers in the conditions could be unenforceable if those suppliers were to rebrand or go out of business. Thus, the suggested references to certain manufacturing brands have been removed. The provision of the proposed screen wall is necessary from a visual amenity perspective and the obscured glazing proposed on second floor level is necessary in the interests of residential amenity.

### **Conditions**

1. The access arrangements including visibility splays as shown on approved Drawing No 02 and Transport NIFCD 1 form dated 18.10.2016 shall be laid out before the dwelling is occupied and permanently retained thereafter.
2. The air source heat pump shall have a sound power level of no greater than 66dB(A) unless otherwise agreed, in writing, with the Planning Authority.
3. Prior to the air source heat pump becoming operational, it shall be permanently housed within an acoustic enclosure to provide attenuation of at least 18dB.
4. Prior to the occupation of the dwelling hereby approved, the proposed screen wall to the front of the dwelling as shown on Drawing No 01 (Rev. 02) shall be provided in its entirety and retained on a permanent basis.
5. Prior to the occupation of the dwelling hereby approved, all second floor windows shall be finished in obscured glass and permanently retained.
6. The development shall be begun before the expiration of five years from the date of this permission.

This decision approves: Drawing No 01 (Rev. 2), Location Plan, Site Plan, Plans and Elevations, 1:100 and 1:1250 @ A1, Drawing No 02, Contextual Elevations and Block

Plan 1:200 and 1:500 @ A1, Drawing No 03, Contextual Overlays 1:200 @ A1, Drawing No 04, Overlays – Elevations and Site Plan 1:100 and 1:200 @ A1, Drawing No 05 Overlays – Floor Plans 1:100 @ A1, Drawing 06, Overlays – Floor Plans 1:100 @ A1, Drawing No 07, Overlays – Floor Plans 1:100 @ A1 and Drawing No 8, Study of Viewing Angles, 1:50 @ A3 stamped refused by the Council on 23 March 2017.

**COMMISSIONER PAMELA O'DONNELL**

**List of Appearances**

Planning Authority:- Ms E Hudson (Causeway Coast & Glens Borough Council)  
Ms C Mc Keary (Causeway Coast & Glens Borough Council)  
Cllr. M Fielding (Causeway Coast & Glens Borough Council)

Appellant(s):- Mr S Beattie (Instructed by Clyde Shanks)  
Mr G Rolston (Clyde Shanks)  
Mr C Shanks (Clyde Shanks)  
Mr G Montgomery (Architect)  
Mr K Hunter (Appellant) – Observing

Third Parties: - Mr W Robinson (on behalf of the Objectors)  
Mr K Burns (GM Design)  
Mr & Mrs McGonnigle (No 29 Prospect Road)  
Mr J Dalzell  
Mr C Barkley  
Mr P Elwood  
  
Ms V Stephenson (in support of Appellant)  
Ms O Culbert  
Mr J Hunter

**List of Documents**

Planning Authority:- “A” Statement of Case

Appellant(s):- “C” Statement of Case  
“C1” Letter from Investec

Third Parties:- “B” Statement of Case



