

Title of Report:	Planning Committee Report – LA01/2021/0676/F
Committee Report Submitted To:	Planning Committee
Date of Meeting:	27th April 2022
For Decision or For Information	For Decision

Linkage to Council Strategy (2021-25)	
Strategic Theme	Cohesive Leadership
Outcome	Council has agreed policies and procedures and decision making is consistent with them
Lead Officer	Development Management and Enforcement Manager

Budgetary Considerations	
Cost of Proposal	Nil
Included in Current Year Estimates	N/A
Capital/Revenue	N/A
Code	N/A
Staffing Costs	N/A

Screening Requirements	Required for new or revised Policies, Plans, Strategies or Service Delivery Proposals.		
Section 75 Screening	Screening Completed:	N/A	Date:
	EQIA Required and Completed:	N/A	Date:
Rural Needs Assessment (RNA)	Screening Completed	N/A	Date:

	RNA Required and Completed:	N/A	Date:
Data Protection Impact Assessment (DPIA)	Screening Completed:	N/A	Date:
	DPIA Required and Completed:	N/A	Date:

<u>App No:</u>	LA01/2021/0676/F	<u>Ward:</u>	CLOGH MILLS
<u>App Type:</u>	Full Planning		
<u>Address:</u>	100m south east of 145 Bridge Road, Dunloy		
<u>Proposal:</u>	Change of house type to that previously approved ref: D/2008/0131/RM		
<u>Con Area:</u>	N/A	<u>Valid Date:</u>	28/05/2021
<u>Listed Building Grade:</u>	N/A		
<u>Applicant:</u>	Mr. T Hughes, 1 Dunaghy Wood, Martinstown, Ballymena, BT43 6QJ		
<u>Agent:</u>	D. Mc Keown Architecture, 7 Lignamonagh Court, martinstwon, Ballymena, BT43, 6QN		
<u>Objections:</u>	0	<u>Petitions of Objection:</u>	0
<u>Support:</u>	0	<u>Petitions of Support:</u>	0

EXECUTIVE SUMMARY

- Full planning permission is being sought for a change of house type from the previously approved D/2008/0131/RM.
- The site is located within the open countryside as designated in the Northern Area Plan 2016.
- It is considered that there is insufficient evidence to demonstrate development commenced on planning application D/2008/0131/RM before planning permission expired.
- It is considered that there are no overriding reasons why the proposal is acceptable under CTY 1.
- No letters of objection or support have been received.
- The following consultees have been consulted and raise no objection to the proposal:
 - HED Historic Monuments
 - DAERA Water Management Unit
 - NI Water
 - Environmental Health
- DfI Roads has requested further details at a scale 1:500.
- Refusal is recommended.

Drawings and additional information are available to view on the Planning Portal- <http://epicpublic.planningni.gov.uk/publicaccess/>

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** full planning permission for the reasons set out in section 10.

2 SITE LOCATION & DESCRIPTION

- 2.1 The site is located within the open countryside – approx. 2.5km south of Dunloy. The area where the site is located is called The Bridge and comprises of a bar and restaurant, car park, dwellings and agricultural buildings sited at a crossroads and all set within agricultural land. The Bridge Road and Glenbuck Road are home to a number of single dwellings with roadside plots.
- 2.2 The application site comprises of a building site on the eastern side of the Bridge Road. A carpark which appears to serve the Bridge Bar is located directly north of the site and a building/contractor's yard is located across the road to the west along with associated sheds. Upon site inspection, works were taking place to complete the dwelling and the access installed onto Bridge Road. New boundaries to the south and east had been defined with a post and wire fence. The northern site boundary consists of a row of mature fir trees which are part of a small pocket of trees separating the site from the carpark. The roadside boundary consists of a grass verge and mature hedgerow.

3 RELEVANT HISTORY

- 3.1 D/2004/0703/O – 100m south east of 145 Bridge Road, Dunloy
Site for dwelling
Permission granted 23/04/2005.
- 3.2 D/2008/0131/RM – 100m south east of 145 Bridge Road, Dunloy
Single storey dwelling
Permission granted 25/06/2008.
- 3.3 LA01/2021/0351/NMC – 100m south east of 145 Bridge Road, Dunloy
Non/material change to application D/2008/0131/RM – raising roof ridge by 400mm to accommodate usable rooms within loft, internal alterations, repositioning of windows to rear and side elevation and

inclusion of French doors all within original size and shape of approved dwelling.

Planning Application Required 08.04.2022

4 THE APPLICATION

- 4.1 Full planning permission is sought to construct a new dwelling which is a change of house type to that previously approved under D/2004/0703/O & D/2008/0131/RM. The changes sought are raising the ridge height by 0.4m, repositioning of windows to rear and side elevations, and installation of new French doors within the original size and shape of approved dwelling.

Habitats Regulations Assessment

- 4.2 The potential impact of this proposal on Special Areas of Conservation, Special Protection Areas 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 features, conservation objectives or status of any of these sites.

5 PUBLICITY & CONSULTATIONS

5.1 External

Neighbours: 3 neighbouring properties were notified in relation to the application, and no letters of objection or support were received.

5.2 Internal

DfI Roads – request an amended block plan

Environmental Health - no objections

HED Historic Monuments - no objections

DAERA Water Management Unit - no objections

NI Water – 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:

- The 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 RELEVANT POLICIES & GUIDANCE

The Northern Area Plan 2016

The Strategic Planning Policy Statement (SPPS)

PPS 21: Sustainable Development in the Countryside

PPS 3: Access, Movement and Parking

8 CONSIDERATIONS & ASSESSMENT

The main considerations in the determination of this application relate to Commencement of Development, Case Law, Integration and Rural Character, and; Access.

Planning Policy

8.1 The site is located within the open countryside but is not within any specific zonings or designations.

- 8.2 The proposal must be considered having regard to the NAP 2016, SPPS, PPS policy documents and supplementary planning guidance specified above.

Commencement of Development

- 8.3 The application is for a change of house type. The previously approved applications (D/2004/0703/O and D/2008/0131/RM) were granted permission under a different policy regime. Following the introduction of PPS 21 in 2010, this is the relevant policy to assess the application. However, as the proposed development does not fall within any of the ranges of types of development that are acceptable under CTY 1 of PPS 21, the applicant's agent has submitted information in an attempt to demonstrate a material start has been made on the previous permissions.
- 8.4 D/2008/0131/RM is the Reseved Matters approval and is the latter of the permissions to elapse, with a requirement for development to commence before 26th June 2010. Information has been submitted to try and demonstrate that the development was commenced before the expiration date. The primary evidence submitted confirms a building control inspection took place on 18th June 2010. The building control notes state that *"trial hole excavated to 3.6m and still on peat, so advised that foundations should be piled; further inspection required."* This confirms that only a trial hole had been excavated and advice was given regarding foundations. It does not confirm that any foundation trench had been dug or any foundations poured or piled. The Building Control information submitted states that a further inspection took place and states that *"piles all driven as piling log no. 4025 all in order."* However, that inspection did not take place until 4th November 2011; almost 18 months after planning permission had expired. The agent was asked to submit any further evidence to demonstrate a material start had been.
- 8.5 A letter from Planning Pal was submitted on 16th March 2022 in support of the application and to demonstrate development had lawfully commenced on site prior to planning permission expiring. This letter also primarily relies on the information received from Building Control.
- 8.6 The letter begins that whether this development was deemed to have commenced in time or not is ultimately determined by the primary legislation referencing the Planning Act (NI) 2011. The letter goes on

to outline the meaning of development under Section 23 of the 2011 Planning Act, which includes the carrying out of building operations. It goes on to say that building operations include “*other operations normally undertaken by a person carrying on business as a builder.*” The letter states that site excavations, a trial hole and a material change in the use of the land had all taken place, and these were confirmed by Building Control on 18th June 2010 and concludes that development had in fact commenced.

- 8.7 The Planning Act (Northern Ireland) 2011 came into operation on the 1 April 2015 and replaced the Planning (Northern Ireland) Order 1991. The application under consideration relates to an application which required development to commence prior to 26th June 2010. It is necessary to consider the application in the context of the prevailing legislation at that time, which is the 1991 Planning Order.
- 8.8 Article 36 (1) of the Planning Order (1991) states that development is taken to be begun on the earliest date on which any of the operations specified in subsections (a) to (d) comprised in the development begins to be carried out. As the approved development included the erection of buildings, Article 36(1) (a) applies in this case. There is a need to consider and determine if the works undertaken by the applicant involved any work of construction in the course of the erection of the buildings. Generally, a Certificate of Lawfulness or Development (CLUD) is required to demonstrate definitively that development has commenced on site and the applicant can continue to complete the development, as approved. However, in the absence of a CLUD, the information submitted has been considered in the context of this application and whether the principle of development has been established on this site.
- 8.9 The notes from the Building Control site inspection on 18th June 2010 state that a trial hole had been excavated to a depth of 3.6m. The Building Control note concludes that, due to the ground conditions that the foundations should be piled, and that further inspection was required.
- 8.10 As set out in Para 8.8, Article 36(1) (a) applies in this case. Landmark appeal decision 2017/E0010 underscores that the focus is on the buildings and that the work carried out must be work of construction in the course of erection of the buildings. The works carried out and confirmed by the Building Control inspection comprise a trial hole to confirm ground conditions. There is no evidence to show where this

trail hole was, and these are not works considered to be work of construction in the course of the erection of a building.

- 8.11 Therefore, on the evidence submitted, it has not demonstrated that a material start has been made. Furthermore, no evidence has been submitted to suggest that any work had been undertaken to comply with the pre-commencement conditions relating to an access. Until pre commencement conditions have been satisfied, a planning permission cannot be implemented.

Case Law

- 8.12 The letter from Planning Pal submitted in support of the application references ***FW Gabbitas v SSE and Newham LBC [1985] JPL 630***. It is argued that the relevance of this case law in the context of this application is that an individual's evidence does not need to be corroborated by independent or other evidence in order to be accepted. If the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate (sic) "on the balance of probability" then it should be accepted.
- 8.13 In considering the balance of probability relating to this application, the evidence provided primarily relates to the information provided by Building Control. The Planning Department does not dispute the content of this information. What is evident is the lack of information submitted to demonstrate a material start has been made requiring development to commence before 26th June 2010. Notwithstanding there is no information submitted relating to pre-commencement conditions, the only works carried out prior to planning permission expiring relate to a borehole, it is considered that, on the balance of probability, development has not commenced on site within the required timeframe.
- 8.14 Satellite imagery from June 2010 appear to corroborate the information submitted as there is no evidence within this that foundations had been either dug or poured.
- 8.15 Having regard to the consideration set out in Paras 8.3 – 8.14 it is concluded that development did not commence on site, prior to the 26th June 2010 deadline. Furthermore, as the proposed development does not fall within any of the acceptable types of housing under CTY 1, and there are no overriding reasons why this development is essential, the principle of a dwelling at this site is unacceptable.

Therefore, full permission cannot be granted for a change of house type.

Integration & Rural Character

8.16 CTY 13 states that:

“Planning permission will be granted for a building in the countryside where it can be visually integrated into the surrounding landscape and it is of an appropriate design.”

It is considered that the single storey dwelling proposed is likely to sufficiently integrate into the landscape. There is a row of mature trees to the northern boundary which will screen the dwelling on approach from the north and provide a backdrop for the dwelling on approach from the south. The mature trees which line the road to the south of the site will also assist in filtering views of the dwelling.

8.17 The dwelling is modest in scale and single storey in height. The design is considered acceptable. The proposal complies with Policy CTY 13.

8.18 CTY 14 states that:

“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.”

It is considered that, due to the scale and design of the dwelling, it would respect the pattern of development within the area and would not result in an unacceptable suburban-style build up of development. The proposal complies with Policy CTY 14.

Access

8.19 DfI Roads has been consulted as the competent authority on road matters. It has requested an amended block plan detailing further information required to allow full consideration of the proposal. As the principle of development is considered to not be acceptable, this information has not been received. It is considered that due to the lack of information submitted in this regard that the proposal is contrary to planning policy AMP 2 of PPS 3 relating to roads safety.

9 CONCLUSION

- 9.1 The proposal is considered unacceptable in this location having regard to the Northern Area Plan, SPPS, other planning policies and material considerations. The proposal is contrary to CTY 1 of PPS 21 in that it has not been demonstrated that a material start was made on the previous application D/2008/0131/RM.
- 9.2 It is considered that there are no overriding reasons why the proposal falls under any of the categories of development acceptable under CTY 1. Refusal is recommended.

10 Reasons for Refusal

1. The proposal is contrary to Paragraph 6.73 of the Strategic Planning Policy Statement for Northern Ireland (SPPS) and Policy CTY 1 of Planning Policy Statement 21, in that there are no overriding reasons why the development is essential and could not be in a settlement.
2. The proposal is contrary to Paragraph 6.77 of the Strategic Planning Policy Statement for Northern Ireland (SPPS) and Policy AMP 2 of Planning Policy Statement 3, as it has not been demonstrated that the proposal, if permitted, would not prejudice road safety or significantly inconvenience the flow of traffic.

Site Location Map

