

# Addendum

## LA01/2015/0370/F

### Full Planning

#### Update

Rev John Hemphill, the applicant for the application has made a written submission in regards to LA01/2015/0370/F. The following identifies each part of the submission and provides comment as necessary.

- The cover letter which requests permission be granted.
- A copy of the enforcement notice issued by The Council on 15<sup>th</sup> September 2015 is submitted. It is this enforcement notice which was subject of appeal reference 2015/E0035. As explained in the original Committee Report, the enforcement notice was upheld at appeal.
- A plan entitled site survey which is annotated to indicate that the subject dwelling is not on a higher platform than the neighbours when the FFL of the adjacent houses are compared.

The topography of the surrounding area is such that it falls from the south where the neighbouring properties are located northwards to the Applicant's site and beyond. The neighbouring properties on the opposite side of Baranailt Road are therefore constructed on land which has always been at a higher ground level than the application site. As documented in the Committee Report, the ground level of the development site has been increased by the deposition of inert waste and a 2.5m platform has been added on top upon which the dwelling has been constructed. This is evident on site and can be seen in the presentation slides.

- An extract from the applicant's statement of case written for enforcement appeal reference 2015/E0035 has been

included. It includes paragraphs 4.12 to 4.31. The main issues this argues are that: the approved development was lawfully commenced and is therefore a fall-back position; the proposal is acceptable in terms of integration; there are compelling personal circumstances; there is support for the proposal and; enforcement action was not timely. However, as this is an extract from the applicant's statement of case for the enforcement appeal, this has already been considered by the PAC when reaching their decision to uphold the appeal.

- The submission includes an affidavit signed by Rev John Hemphill in support of his decision to apply for Judicial Review of the decision made by the PAC. This is dated received by the High Court on 07 October 2016. This affidavit outlines the background to the planning application, the timing of construction works, the enforcement proceedings and appeal.
- The final document is a statement filed pursuant to Order 53, Rule 3(2) (a) of the Rules of The Supreme Court (Northern Ireland) 1980 as the application for Judicial Review of the decision made by the PAC. The grounds upon which the relief is sought are as follows
  - That the PAC erred in law applying the wrong time limit (5 years instead of 4 years) when considering the lawfulness of the enforcement action.
  - The PAC failed to take into account the Applicant's intention for the development in determining whether it was substantially complete. In particular that he did not intend to live in the home until his retirement and therefore did not intend to complete the interior at the time he was completing the structure of the property.
  - The PAC failed to have regard to, or placed insufficient weight to Applicant's intentions when he commenced development by way of completing the access in and around 2002/03 when determining whether the access was completed to serve the approved dwelling house.
  - The PAC acted procedurally improperly by failing to allow the applicant to address the argument that the access created was to facilitate the unlawful development and by failing to give adequate reasons for the decision.
  - The PAC failed in its duty under Section 6 of Human Rights Act 1998 to act in accordance with the

Applicant's right to respect for private and family life by failing to have adequate regard for the effect of having to demolish the dwelling would have on applicant due to personal circumstances and failing to consider whether there were remedial actions short of demolition which would have been sufficient to remedy breach.

An application to apply for Judicial Review against the decision of the PAC to uphold the Enforcement Notice does not prevent the Council from determining the subject planning application.