Title of Report:	**Planning Committee Report – LA01/2024/1004/F**
Committee Report Submitted To:	**Planning Committee**
Date of Meeting:	**30th April 2025**
For Decision or **For Information**	**For Decision – Referred Application by Alderman John McAulay**
To be discussed In Committee YES/NO	NO

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	Senior Planning Officer

Estimated Timescale for Completion	
Date to be Completed	

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

Legal Considerations

Input of Legal Services Required	**NO**
Legal Opinion Obtained	**NO**

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:

App No: LA01/2024/1004/F **Ward:** Kilrea

App Type: Full Planning

Address: Lands 85m North of 91 Killyvally Road, Garvagh

Proposal: Erection of dwelling & garage and all associated works (change of house type from that approved under C/2010/0029/F - based on material start made to the site and as per visible orthophotography)

Con Area: N/A **Valid Date:** 10.09.2024

Listed Building Grade: N/A **Target Date:** 24.12.2024

Agent: Bell Architects Ltd, 65 Main Street, Ballymoney, BT53 6AN

Applicant: Damien Burke, 9 Spire Way, Toomebridge, BT41 3GB

Objections: 0 **Petitions of Objection:** 0

Support: 0 **Petitions of Support:** 0

Objections: 1 **Petitions of Objection: 0**

Executive Summary

- This proposal is considered unacceptable at this location having regard to the Northern Area Plan 2016 and all other material considerations.

- The site is a triangular section of a wider agricultural field and is located within the rural area as defined in the Northern Area Plan 2016.

- The proposal is for the erection of a dwelling & garage and all associated works (change of house type from that approved under C/2010/0029/F)

- The timeframe for the commencement of development (11th January 2016) on the previous planning permission has long since expired and no Certificate of Lawful Development or Use has been submitted to certify that a lawful commencement has occurred.

- In the absence of a Certificate of Lawful Development or Use the Planning Department cannot give determining weight to the previous planning history of the site and as such the proposal must be considered against the Northern Area Plan and prevailing regional planning policies.

- The proposal fails to comply with the relevant planning policies including the SPPS (Paragraph 6.73) and PPS21 (Policy CTY1) in that it does not meet with one of the permitted types of development in the countryside.

- This application is identical to application LA01/2024/0231/F, which was withdrawn following notification of a refusal.

- Refusal is recommended.

Drawings and additional information are available to view on the Planning Portal-
https://planningregister.planningsystemni.gov.uk/simple-search

1 RECOMMENDATION

1.0 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.

2.0 SITE LOCATION & DESCRIPTION

2.1 The application site is located within the rural area as identified within the Northern Area Plan (NAP) 2016. The site is located on land some 85metres North of No. 91 Killyvally Road, Garvagh.

2.2 The site is a triangular section of a wider agricultural field and is accessed via a dirt laneway. The southeastern and southwestern boundaries are defined by mature vegetation while the northern boundary is physically undefined. The topography of the site appears to be relatively flat.

2.3 During the site inspection a small, unmanned digger was on site and some scraping back has been done in the approximate location of the proposed dwelling however no foundations or works in the construction of the dwelling are evident.

3.0 RELEVANT HISTORY

Planning ref: LA01/2024/0231/F
Location: Lands 85m North of 91 Killyvally Road, Garvagh
Proposal: Erection of dwelling & garage and all associated works (change of housetype from that approved under C/2010/0029/F - based on material start made to the site and as per visible orthophotography).

Decision: Application withdrawn following notification of a refusal.

Note: A site inspection was conducted in relation to the above application on 04.04.24. It is noted that no land had been scraped back in the approximate location of the proposed dwelling at the time of inspection. Therefore the scraping back of land which was evident during the site inspection for the subject application (conducted on 11.11.24) is a recent occurrence.

Planning ref: C/2010/0029/F
Location: Lands 540m North of 91 Killyvalley Road, Garvagh
Proposal: Proposed dwelling and garage
Decision: Permission Granted 12.01.2011

Planning ref: C/2007/1042/RM
Location: Lands North West of 91 Killyvalley Road, Garvagh
Proposal: Construction of dwelling
Decision: Permission Granted 15.02.2008

Planning ref: C/2003/1318/O
Location: Lands at Killyvalley Road, Garvagh
Proposal: Proposed dwelling
Decision: Permission Granted 10.11.2004

4.0 THE APPLICATION

4.1 The application seeks full planning permission for the erection of a dwelling and garage and all associated works (change of house type from that approved under C/2010/0029/F). The acceptability of the proposal is predicated on the claim a material start was made on the historic permission (C/2010/0029/F).

5.0 PUBLICITY & CONSULTATIONS

External

5.1 Advertising: 25.09.24
Neighbours: 1 objection was received to the proposal.

5.2 A summary of the objection follows:

- The only submitted evidence in relation to a material start are aerial photos.

- Aerial image 1 (in Planning Statement) is dated June 2010 with the Agent indicating it shows 'initial works to create access and

visibility splays. The image was taken prior to the granting of approval on 12/01/11.

- Aerial image 2, dated April 2011, which that Agent states 'indicated further works carried out…' does not appear to show any additional works when compared to Aerial image 1.

- Even if the access works were completed after the granting of permission and within the lifetime of the permission, PAC decision 2017/E0035 (makes clear that where the development consists of or includes the erection of a building, it is necessary to undertake work of construction in the course of the erection of the building in order to lawfully commence development.

- The applicant therefore has no fallback permission.

- The proposal does not comply with PPS21 and should be refused.

5.3 Consideration of objection:

I agree that Aerial image 1 was taken before the granting of approval (presuming the stated date is accurate) and that it is difficult to discern that any additional works took place between June 2010 and the date of Aerial Image 2.

I also agree that appeal decisions make clear that where the development consists of or includes the erection of a building it is necessary to undertake work of construction in the erection of that building in order to lawfully commence the development.

The applicant has no fallback permission, and the proposal does not comply with PPS21.

Internal

5.3 **Dfl Roads**: No objections

Northern Ireland Water: No objections

Environmental Health: No objections

DFI Rivers: No objections

6.0 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 3: Access, Movement and Parking

Planning Policy Statement 21: Sustainable Development in the Countryside

8.0 CONSIDERATIONS & ASSESSMENT

8.1 The main considerations in the determination of this application relate to: principle of development and Habitat Regulations Assessment.

Principle of development

8.2 The application site is located in the rural area and outside any settlement limit identified is in the Northern Area Plan 2016. The site is not subject to any further specific zonings or designations. As the application site is located within the rural area the proposal therefore falls to be considered against the rural housing policies contained within the SPPS and Planning Policy Statement 21 (PPS21).

8.3 Both the SPPS and Policy CTY 1 of PPS21 outline the range of types of development which in principle are considered to be acceptable in the countryside.

8.4 As it relates to planning permission 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.

In this case the proposal is not in accordance with Policy CTY2a, as the site is not within an existing cluster of buildings. There is no dwelling to replace on site in accordance with Policy CTY3. The proposal is not based on specific personal or domestic circumstances in accordance with Policy CTY 6. The dwelling is not to meet the essential needs of a non-agricultural business enterprise in accordance with Policy CTY 7. The site is not a small gap site as defined in Policy CTY 8. The proposal is not for the development of a dwelling on a farm in accordance with Policy CTY 10.

8.5 As the proposal fails to meet with the requirements of the SPPS and Policy CTY1 of PPS21 the principle of development is considered unacceptable unless other material considerations outweigh the aforementioned policy provisions.

8.6 The applicant contends that the principle of development is established on the lands in the form of an extant planning permission granted under application C/2010/0029/F.

8.7 The requirements for the commencement of development are set out in legislation. Given the timeframe for commencement of planning approval C/2010/0029/F extended to 11th January 2016 the definition of commencement of development was outlined under both Article 36(1) of the Planning (Northern Ireland) Order 1991 and Section 63(2) of the Planning Act (Northern Ireland) 2011. For clarification there is no difference between both pieces of legislation in defining commencement of development.

8.8 Both pieces of legislation state that "development shall be taken to be begun on the earliest date on which any of the following operations comprised in the development begins to be carried out—

(a)where the development consists of or includes the erection of a building, any work of construction in the course of the erection of the building;"

8.9 As the previous planning permission on the site was for the erection of buildings (dwelling and garage), commencement of planning approval C/2010/0029/F can only be taken from the date upon which works of construction commenced on one of the approved buildings.

8.10 A statutory process exists for the determination of lawful use or development. The mechanism for this determination is via the submission of a Certificate of Lawful Development or Use which, in this instance, is required to establish that a lawful commencement of development approved under application C/2010/0029/F has occurred. This position has been set out in case law in Saxby v Secretary of State for the Environment, Transport and the Regions 1998, and is also the "settled position" of the Planning Appeals Commission (PAC) on such

matters as evidenced in appeals, 2015/A0129 (Appendix 1, notably paragraphs 5 & 6).

8.11 Considering the above, the applicant was informed that they should submit a CLUD application to determine if the asserted commencement of C/2010/0029/F had taken place while the permission was extent. To date a CLUD application has not been submitted.

8.12 In the absence of a CLUD application it cannot be demonstrated that a lawful commencement of application C/2010/0029/F has occurred. The Planning Department advise that this application is not the appropriate mechanism to confer the lawfulness of a material start on C/2010/0029/F.

8.13 A site inspection for application LA01/2024/0231/F (identical to this proposal) was conducted on 04.04.24. It was noted that no land had been scraped back at the time of that inspection. A site inspection for this application was conducted on 11.10.24 where it was noted that a small digger was on site and some scraping back had been done in the approximate location of the proposed dwelling. However, no foundations or works in the construction of the proposed dwelling had taken place. The site appears to remain in agricultural use with no evidence of development occurring. Appeal 2017/E0010 (Appendix 2, notably Paragraphs 5.8 & 5.9) clarifies that in determining the commencement of development, where the development consists of or includes the erection of a building, the focus is on the buildings and that work carried out must be works of construction in the course of the erection of the buildings.

8.14 The Agent and submitted Planning Statement state that works had taken place to provide access to the site to meet DFI roads specifications. The agent believes that these works prove the commencement of development in relation to a dwelling. The agent goes on to indicate that concrete was used in the construction of the entrance pillars for the gates and considers this to be a relevant point.

8.15 Conditions 3, 4 and 5 of Planning Approval C/2010/0029/F relate to the provision of access arrangements to the application site. In particular Condition 3 states;

"The vehicular access, including visibility splays and any forward sight line, shall be provided in accordance with the approved plans, prior to the commencement of any works or other development hereby permitted.

Reason: To ensure there is a satisfactory means of access in the interests of road safety and the convenience of road users.

These conditions require the access arrangements to be put in place prior to commencement of the approved development (Dwelling and Garage). Consequently, any works carried out in relation to the provision of the access while, addressing the pre-commencement conditions of approval C/2010/0029/F, are not works of construction in the course of the erection of a building.

8.16 With regard to the agent's comments in relation to the use of concrete to construct the entrance pillars it is noted that the pillars in question relate to pre-cast concrete posts typically used for agricultural field gates. Additionally, it is noted that the stamped approved drawings for application C/2010/0029/F did not include the provision of pillars. Therefore, the provision of these pillars did not form part of the planning approval and cannot be given any determining weight.

8.17 The agent has made reference was made to planning application LA01/2020/0744/F which, was approved at the Council's Planning Committee, which the agent considers is comparable to this application.

8.18 In relation to planning reference LA01/2020/0744/F - which the agent believes this application "stand on all fours with"; this application relied on a dug trench with concrete poured, as well as invoices, receipts, bank statements and supporting information from third parties. Within the minutes of the committee on 23rd February 2023, The Planning Committee considered the principle of development had been met under Policy CTY8. Consequently, application LA01/2020/0744/F did not rely on, nor was it approved on, solely the provision of the formation of an access.

8.19 The Planning Department would highlight that this application is directly comparable to Planning Application LA01/2022/1203/F

which, was refused planning permission by the Planning Committee (October 2024). In this case members considered that the access and other preparatory works relied upon to demonstrate a material start did not constitute a lawful commencement of planning permission.

8.20 No evidence has been submitted to prove commencement of development in the course of building the dwelling or garage. Consequently, the principle of development must be considered in the context of prevailing planning policy which, as outlined above at paragraphs 8.2 – 8.5, is considered to be unacceptable. Additionally, it has not been demonstrated that there are exceptional or overriding reasons as to why the development is essential in this location and could not be located in a settlement. The proposal is Contrary to Paragraph 6.73 of the SPPS and Policy CTY1 of PPS21.

Design and Layout

8.21 The previously approved dwelling was 7.6metres in height above finished floor level. The frontage measured 13.6metres while the gable measured 9metres. The overall design incorporated two front, and two rear pitches to host the first floor windows, two chimneys, one of either side of the ridge, two rear bay windows with balconies on top of each one, as well as a flat roof front porch. The proposal also included a storey and ¾, double car garage measuring 11.4metres by 6.8metres with a height of 6.6metres and externally finished in natural stone.

8.22 The proposed dwelling and garage will be located in a similar location, and both are of a similar design to the previously approved dwelling, which is a storey and 3/4, measuring 7.2metres in height above finished floor level. The proposal incorporates two flat floor dormers to the front to host the first-floor windows, and there are two chimneys on either side of the ridge. The frontage measures 12.45metres with a gable depth of 7.5metres. The proposal, however, incorporates a storey and 3/4 rear return and a mono-pitch front porch. The proposed garage is a storey and a half, detached, two car garage measuring 9metres by 6metres with a total height of 6.1metres above Finished Floor Level. The external materials of both the dwelling and garage are smooth render, painted white/stone cladding, flat non-profiles roof tiles and black PVC windows.

8.23 The application site is a triangular section of a larger agricultural field that is accessed via a laneway, some 90metres from the public road. The south-eastern boundary of the site is defined by mature vegetation, some 6+metres in height. Views of a dwelling will be achievable when travelling from the north-west towards the site however will have a backdrop of the mature vegetation. On approach from the opposite direction, views will be screened by the mature vegetation.

8.24 While this proposed dwelling is somewhat larger than the previously approved dwelling, it is well screened and set back from the public road.

8.25 Overall, it is considered dwelling on this site will visually integrate into the surrounding landscape, will not be out of character for this rural area nor will it be a prominent feature in the landscape. The proposal complies with Policies CTY13 and 14 of PPS21.

Habitat Regulations Assessment

8.26 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.

9.0 CONCLUSION

9.1 In the absence of a Certificate of Lawful Development or Use it has not been demonstrated that a lawful commencement of Planning Approval C/2010/0029/F has occurred. Consequently, the Planning Department cannot give determining weight to the previous planning history of the site and as such the proposal must be considered against the prevailing regional planning policies. The proposal fails to comply with Paragraph 6.73 of the SPPS and PPS21 (Policy CTY1) in that it does not meet with one of the permitted types of development in the countryside it has not been demonstrated that there are exceptional or overriding reasons as to why the development is essential in this

location and could not be located in a settlement. Refusal is recommended.

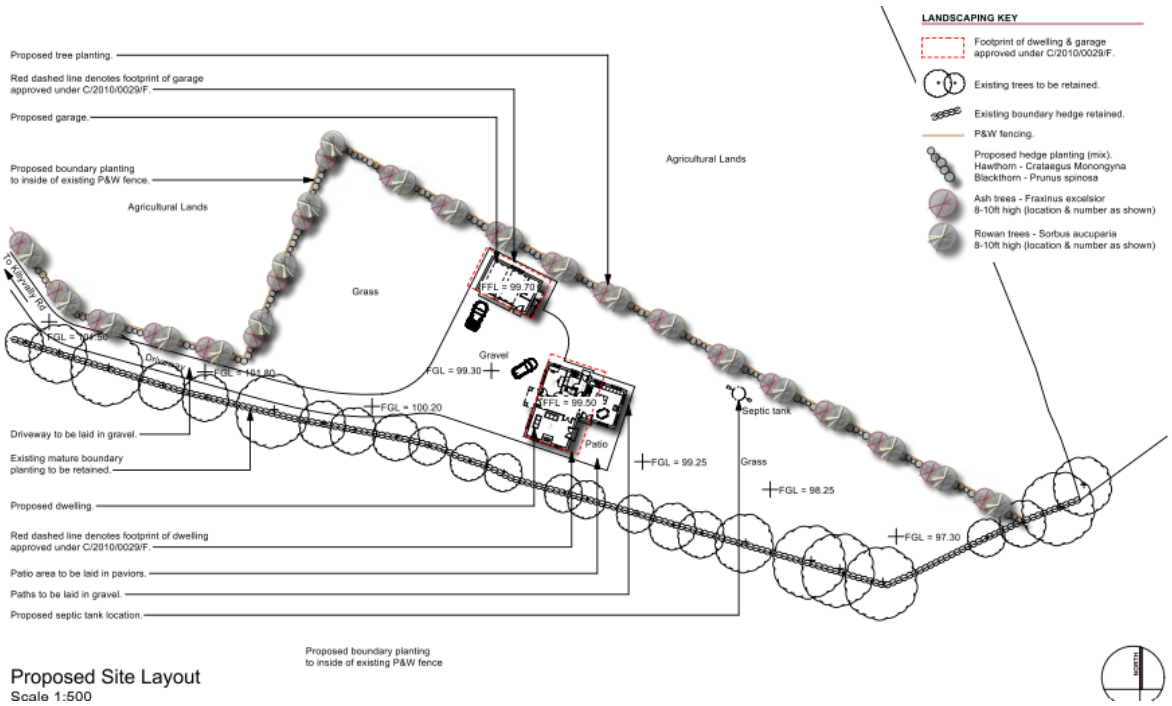
10.0 Reasons for Refusal

1. The proposal is contrary to The Strategic Planning Policy Statement for Northern Ireland (SPPS), Paragraph 6.73, and Planning Policy Statement 21, Policy CTY 1 in that there are no overriding reasons why the development is essential and could not be located in a settlement.

Site Location Map

Site Location Map
Scale 1:2500

Proposed Site Layout



Proposed Site Layout
Scale 1:500

Appendix 1 – Appeal 2015/A0129

Planning Appeals Commission

Appeal Decision

Park House
87/91 Great Victoria Street
BELFAST
BT2 7AG
T: 028 9024 4710
F: 028 9031 2536
E: info@pacni.gov.uk

Appeal Reference:	2015/A0129
Appeal by:	Kelvin Properties Ltd
Subject of Appeal:	The refusal of full planning permission
Proposed Development:	Relocation of an approved retail showroom (including amended elevations) in substitution for planning permission C/2009/0824/F, along with general site works
Location:	Land adjacent to Unit 10 (Pets at Home), Riverside Regional Centre, Castlerce Road, Coleraine
Planning Authority:	Causeway Coast and Glens Borough Council
Application Reference:	C/2014/0206/F
Procedure:	Informal Hearing on 28 January 2016
Decision by:	Commissioner McShane, dated 6 June 2016

Decision

1. The appeal is dismissed.

Reasons

2. The main issues in this appeal are whether:
   - the proposal is in accordance with the local development plan;
   - the impact of the proposal on the vitality and viability of Coleraine town centre would be acceptable both in its own right and in terms of the precedent it would create; and
   - there is a need for the development at this location.

3. The appeal proposal seeks planning permission to erect a new retail showroom adjacent to Pets at Home, Riverside Centre, Coleraine. The proposal is described as a relocation and substitution of a previous planning approval for a retail showroom on a site located north of Burger King, Riverside Centre. The Appellant proposes that permission C/2009/0824, which was granted full planning permission on 12 May 2010 and which had no restriction placed on the form of retailing to be carried out from it, be the subject of an unopposed revocation order, issued by the Planning Authority, with no compensation claimed by him.

4. The Appellant, in seeking to rely on the revocation of the May 2010 approval, argues that that planning permission remains extant based upon a number of access and other site works that it is claimed took place on 6 May 2015. The Planning Authority witness stated that he was not in a position to confirm the date the works took place and while recognising that it is a matter of judgement as to whether a material start has been made to a development he pointed out that the

proper channel for establishing such a matter was for the Appellant to apply for a Certificate of Lawful Development (LDC).

5. There is a dispute between the parties as to whether the claimed works took place prior to 11 May 2015 and as to whether the nature of those works amounts to a commencement of development. This set of circumstances is distinguishable from appeal decision 2004/A420. In that appeal the date of commencement of works and their extent were not disputed by the Department. In any event, the settled Commission position is that there is, as argued by the Planning Authority, a legal process introduced by statute that should be followed. Sections 169 – 174 of the 2011 Act provide the relevant legislation in respect of LDCs; replacing Articles 83A-F of 1991 Order as introduced by the Planning (Amendment) (NI) Order 2003 (no.430). The statutory scheme involves the initial determination of lawful use by application to the planning authority for the issue of a certificate. If the application is refused, the right of appeal to the Commission is provided for. In such circumstances, it would not be appropriate to sidestep the LDC process. Consequently, no weight can be attached to the argument that the appeal proposal can be treated as a substitute for an extant permission and the assessment of whether there is a justifiable basis to allow an unrestricted retail unit on the appeal site must be made in that context.

6. The appeal must be determined in accordance with the local development plan, so far as material to the application, unless any other material considerations indicate otherwise. The local development plan in this instance is the Northern Area Plan (NAP), which was adopted in 2015.

7. The NAP states that the Riverside Centre, which is unzoned, has developed with a particular commercial role accommodating a range of retailing commonly found in out-of-town centre sites. It goes on to state that it will seek to ensure that any future development there is complementary to, rather than competing with, the town centres, and does not adversely affect the vitality and viability of the latter. The NAP's focus is on maintaining a vibrant, compact, multi-functional town centre and to this end a town centre boundary for Coleraine is defined in which "normally all retail development will be required to locate".

8. The appeal site is extensive measuring approximately 7 hectares. The 464sqm retail unit proposed would be located adjacent to Pets at Home and would use existing car parking. There is no specific end user in mind, however it is proposed that the unit could include any of the following: a pharmacy; local convenience store; dry cleaners; hire shop; barbers/hairdressers; travel agent; baby products/equipment; outdoor leisure goods or bed retailer. These are unrestricted Class A1 town centre retail uses. Any of these uses would compete with businesses in the town centre and in that sense would not be complementary to the town centre.

9. It was estimated that the likely impact of the proposal on Coleraine town centre, assuming a worst case scenario that the diversion by the proposal from the town centre was 100%, would be 6%. This was not disputed. Similarly, there was no dispute that impacts on town centres below 10%-12% are considered acceptable.

10. Notwithstanding this, the Planning Authority is concerned about precedent. If the appeal proposal were to be allowed, the Planning Authority would find it difficult to

resist future applications for small scale unrestricted Class A1, retail units at the Riverside Centre. There was no persuasive argument as to how the precedent would be limited. Therefore, allowing the appeal would create an undesirable precedent and such a self evident precedent would pose an unacceptable threat to the vitality and viability of Coleraine town centre. Accordingly, the appeal proposal is not in accordance with the NAP.

11. The Strategic Planning Policy Statement for NI (SPPS), published in September 2015, provides strategic subject planning policy for a wide range of planning matters, including town centres and retailing. It cancelled Planning Policy Statement 5: Retailing and Town Centres and Planning Policy Statement 1: General Principles.

12. The SPPS states that it is important that planning supports the role of town centres and contributes to their success. The premise that underpins the regional strategic retail objectives and policy, which must be taken into account in the preparation of LDPs and in the determination of planning applications, is the *town centres first approach* (my emphasis). Notwithstanding the Planning Authority's reference to Paragraph 6.279, which is primarily about retailing in the countryside, the concern of the Planning Authority is that the appeal development would have an adverse impact on Coleraine town centre, given its proposed size, unrestricted Class A1 use and out of centre location. It has already been concluded that the proposal is not in accordance with the NAP as the unacceptable precedent that it would create would pose a threat to the vitality and viability of the town centre. It therefore follows that the proposal is completely at variance with the town centres first approach of the SPSS.

13. The NAP, notwithstanding its adoption in September 2015 and its end date of 2016, has not been prepared with regard to the new regional policies in the SPPS. Accordingly, it is not an up-to-date plan. Therefore, as required by Paragraph 6.282 of the SPPS, an assessment of need must be prepared. There is no conflict between this paragraph and Paragraph 6.283, which requires applications for retail developments above a threshold of 1000sqm, which are not proposed in town centre location and are not in accordance with the LDP, to undertake a full assessment of retail impact *as well as* (my emphasis) need.

14. The needs assessment provided by the Appellant explained his need to locate a retail unit in a commercially attractive part of the Riverside Centre; but this only explains how the appeal development would benefit the developer. He pointed to the need to provide a small scale retail unit to meet the needs of the local resident population; however, the Appellant has not specified what the specific end use is, explained why it is needed at this particular location or provided evidence on the needs of the local population. The construction of the retail unit would generate employment; however, this would also be the case if it were to be built within the town centre or at an edge of centre location. The needs assessment provided is insufficiently robust and does not outweigh the threat posed to the vitality and viability of Coleraine town centre of allowing a small scale, unrestricted Class A1 retail use outside the town centre and the undesirable precedent it would create.

14. The appeal proposal is not in accordance with the NAP or regional retail policy within the SPPS. The Planning Authority has sustained its objection to the proposal and the appeal must fail.

The decision is based on the following drawings:-

- APP Drawing SL01 (DOE Drawing No 01): Site Location Map (Scale 1:2500)
- APP Drawing SK02 (DOE Drawing No.03 (REV A): Proposed Site Plan (Scale 1:500)
- APP Drawing SK04 (DOE Drawing No.05): Proposed Plan (Scale 1:100)
- APP Drawing SK06 (DOE Drawing No.07): Proposed Elevations (Scale 1:100)

COMMISSIONER DMCSHANE

Appendix 2 – Appeal 2017/E0010

Commission Reference: 2017/E0010

PLANNING APPEALS COMMISSION

THE PLANNING (NORTHERN IRELAND) ACT 2011
SECTION 173

Appeal by Mr D Heaney against the refusal of an application for a Certificate of Lawfulness of Proposed Use or Development for the alteration to an existing access including removal of hedgerows and erecting new fencing. Stoning and fencing to existing laneway. Demolition of existing dwelling. Proposing to complete development in accordance with Planning Approval C/2009/0391/F
at 46 Tirkeeran Road, Garvagh
Report
by
Commissioner Rosemary Daly

Planning Authority Reference: LA01/2016/0635/LDP

Procedure: Hearing on 21 September 2017

Report Date: 17 October 2017

Planning Appeals Commission

1.0 BACKGROUND

1.1 An application for a Certificate of Lawfulness of Proposed Use or Development (CLOPUD) was received by Causeway Coast and Glens Borough Council on the 16 May 2016. By notice dated 10 April 2017 the Council refused to certify that on this date that the development was lawful for the following reason:

> **1 The Council, having considered the information provided, is not satisfied that the proposed operations specified and shown on the attached drawing 01 received on 16 May 2016 constitutes a lawful start of the permission for a replacement dwelling (C/2009/0391/F) and as such the planning permission has expired.**

1.2 An appeal against the notice of refusal was received by the Commission on the 2 June 2017.

2.0 SITE AND SURROUNDINGS

2.1 The appeal site is located in the rural area some 1.5 miles south west of Garvagh. The site is set back some 200 metres from the Tirkeeran Road and is occupied by two large agricultural buildings. To the north west corner of the site some rubble and large boulders exist. An electricity pole is also positioned to the north west corner of the site.

3.0 THE APPELLANT'S CASE

3.1 The appellant stated the farm to which the appeal site relates was purchased in 2005-2006. Planning permission was granted on 11 November 2009 (reference C/2009/0391/F) for "*demolition of an existing dwelling house and construction of replacement dwelling with detached garage*" at 46 Tirkeeran Road. (Appendix 1 decision notice and location map). The replacement dwelling approved on the site was to be located partly on the footprint of original dwelling on the site.

3.2 Condition 2 required that development commence within five years of the date of approval (11 November 2014). Condition 3 requires that "*the construction of the dwelling hereby permitted, including the clearing of topsoil, shall not commence until the existing building, coloured green on the approved plan no. 01, date stamped 29 September 2009 is demolished, all rubble and foundations removed and the site restored in accordance with the details on the approved plans*".

3.3 The existing dwelling was demolished during the period between 20 September and 2010 and 8 April 2011. The appellant was advised by his previous agent that the replacement dwelling had to be located within the curtilage of the existing dwelling. Hence why the proposed site plan for C/2009/0391/F illustrates all the existing farm sheds to be demolished in order to create a habitable living area. Only the dwelling on the site has been demolished to date.

3.4 A new application (LA01/2015/0082/F) was lodged for a "*proposed off site replacement dwelling and garage to supersede previous planning approval C/2009/0391/F*". This application was made to seek planning permission to relocate the proposed dwelling outside the curtilage of the existing farm group so that the existing farm buildings could be retained.

3.5 Planning permission was refused on the basis it was considered to be contrary to Policies CTY1 and CTY3 of Planning Policy Statement 21 as there is no structure that exhibits the essential characteristics of a dwelling on the site and all external structural walls of the original building are not substantially intact. It is the Council's view that the 2009 permission had lapsed. This decision was appealed (2015/A0173) but was withdrawn. The CLUD application, subject of this appeal, was subsequently made.

3.6 It is common case that if development had commenced under the 2009 permission, the permission would be preserved and the dwelling approved under that permission could be lawfully completed. Pre-commencement conditions under C/2009/0391/F are set out below:

- Condition 1: Prior to the commencement of work a drainage channel at 5 metres from the road edge and outlet to a soak away at least 10 metres from the edge of the public road shall be constructed.

- Condition 6: The vehicular access, including visibility splays and any forward sight line, shall be provided in accordance with the approved plans, prior to the commencement of any works or other development hereby permitted.

- Condition 7: The area within the visibility splays and any forward sight line shall be cleared to provide a level surface no higher than 250mm above the level of the adjoining carriageway before the development hereby permitted is commenced and shall be retained and kept clear thereafter.

3.7 Condition 1 is a standard condition recommended by the Roads Authority to ensure no surface water runs from the laneway and onto the public road. The fall of the road at the appeal site is away from the public road and so it is physically impossible for water to run onto the public road. This condition is unnecessary and was not implemented.

3.8 The development approved on the site relates to a replacement dwelling. The existing dwelling on the site had an access in place onto the public road. The upgrading of this access for a new dwelling on the site was therefore not necessary. Nonetheless to comply with the conditions of the planning permission the appellant willingly upgraded the access. Existing hedges were cleared and replaced with a post and wire fence and the laneway was re-stoned in order to improve and upgrade the access. The Council acknowledges that these works were undertaken during the life of the 2009 permission.

3.9 In this respect the pre-commencement requirements of Conditions 1, 6 and 7 were fully met. Additionally an electricity pole had been erected at the appellants own expense to ensure that electricity supply would be maintained for the replacement dwelling approved on the site. Hard core had been brought to the site and spread along the lane way leading from the road to the group of buildings on the site. Mr Patrick Bradley had supplied the aggregate to the site and around the same time a large excavator was taken onto the site to demolish the existing dwelling. It made sense to demolish the dwelling at the same time as the improvements to the lane and access. The appellant also recalled that the Bangor Blue slates were removed from the property and sold for c£1,250. This money had off-set the overall cost of the works carried out on the site which amounted to c£2,000. Accordingly the works carried out on the site give rise to more than works that could be considered as *de minimis* and could be considered to constitute commencement of development on the site.

3.10 Compliance with these conditions can also be considered to be commencement of development for the reasons set out below taking account of relevant case law. In the case *Thayer v Secretary of State for the Environment (1992) JPL 264* considered the matters must relate to the facts of each case. *The Malvern Hills District Council v Secretary of State for the Environment and Robert Barnes & Company (1982) JPL 439* established that the works which are genuinely undertaken that result in some physical alteration of the land and establishes a change in the character of the land can be considered as development. Both cases establish that very little needs to done.

3.11 Without prejudice to the above, if the Commission considers these works not to constitute commencement we respectfully submit that the only other issue to be considered in this appeal is whether demolition took place during the lifetime of the 2009 permission and the legal consequences of this with regard to the commencement of development.

3.12 The original dwelling was demolished in the period between 20 September 2010 and 8 April 2011. The submitted aerial photographs show the dwelling is not on the site on 8 April 2011. At the time of the 2009 application and during the lifetime of the permission (11 November 2009 – 10 November 2014) the relevant legislation in force was the Planning Order (Northern) Ireland 1991 (as amended).

3.13 Article 34 of the 1991 Order states that every planning permission granted or deemed to be granted shall be granted or as the case may be, deemed to be granted subject to the condition that the development to which it relates must be begun within: -

- Five years of the date on which the permission is granted; or
- Such other period (whether longer or shorter) as the Department considers appropriate.

3.14 Article 36 then states for the purpose of Articles 34 and 35, development shall be taken to be begun on the earliest date on which any of the following operations comprised in the development begins to be carried out:-

- Where the development consists of or includes the erection of a building, any work of construction in the course of the erection of the building;
- Where the development consists of or includes alterations to a building, any work involved in the alterations;
- Where the development consists of or includes a change of use of any building or other land, that change of use'
- Where the development consists of or includes mining operations, any of those operations.

3.15 On the face of it none of the categories appear to include demolition. Article 11 of the Order sets out the definition of development stating development means the carrying out of building, engineering, mining or other operations in, on or over land, or making of any material change to the use of any buildings or other land. Article 11(1A) sets out for the purpose of the Order what *'building operations'* includes and makes reference to the 'demolition of buildings'.

3.16 Article 11 (1A) explicitly includes demolition in the definition of "development" and therefore in principle planning permission under the 1991 Order can be granted for demolition as a sole operation (i.e. without any other form of development). This being

the case, on a narrow interpretation of Article 36, a planning permission for demolition could never be "begun". This clearly creates a perverse result that could not have been in the contemplation of the legislators at the time.

3.17 It is noted that Article 11 (1A) was inserted into the 1991 Order by the Planning Amendment (NI) Order 2003 for the purposes inter alia of including demolition within the definition of "development". Given that the legislators at that time did not see fit to amend Article 36 further demonstrates that Article 36 was considered sufficiently broad as to encompass demolition.

3.18 The key issue therefore in this appeal is the definition of "demolition" under Article 11 of the 1991 Order. Article 11 (2) sets out a number of circumstances (a-f) where operations do not involve development for the purpose of the Order. In accordance with (f) the demolition of any description of building specified in a direction given by the Department is one type of development.

3.19 A number of Directions have been issued under Article 11(2) (f) which narrowed the circumstances under which demolition could be considered as development. Those that are relevant to the period during which the 2009 permission was extant were:

- The Planning (Demolition – Description of Buildings) Direction 2009, which came in to effect on 2 April 2009 (the "2009 Direction"; and
- The Planning (Demolition – Description of Buildings) Direction 2012, which came into force and repealed the 2009 Direction on 19 September (the "2012 Direction".

3.20 The 2009 Direction was restrictive in terms of the scope of demolition activities that could be considered to be development. It did not include demolition of the existing property under the 2009 permission.

3.21 The 2012 Direction significantly expanded the range of demolition works that would constitute development. Only the following demolition operations were not included within the definition of development (paragraph 2 of the Direction);

- A building the cubic content of which, measured externally, does not exceed 115 cubic metres;
- Subject to paragraph (c) the whole or any part of a gate, fence, wall or other means of enclosure;
- In the case of an area of townscape character or an area of village character, the whole or any part of a gate, wall, fence or other means of enclosure which:-
- Is adjacent to a road or open public space and is less than 1 metre, high; and
- In any other case is less than 2 metres high

3.22 The demolition of the existing dwelling under the 2009 permission does not fall within any of the exclusions in the 2012 Direction so in principle would fall within the definition of development. The critical question therefore is whether demolition that took place prior to the 2012 Direction coming into force, but within the lifetime of the 2009 permission would constitute development and preserve the permission.

3.23 As a general principle, legislation, unless specifically stated to do so, is not intended to act retrospectively and courts are unwilling to give effect to legislation retrospectively,

particularly where the outcome may be unfair. However, this general principle is not fixed and must be interpreted and considered in light of the facts of any particular case, particularly where fairness of the outcome may be a factor.

3.24 It is noted that the 2012 Direction, whilst specifying that it is "*Effective from 19 September 2012*" it does not specify any date before or after which demolition must take place in order to fall within the Direction.

3.25 In the *Yew Bon Tew alias Yong Boon Tiew and Another v Kenderaan Bas Mara (1983) 1 A.C. 553* the Court of Appeal held that:

> "*The proper approach to the construction ... [is] to see whether the statute, if applied retrospectively to a particular type of case, would impair existing rights and obligations.*"

3.26 The fact that a planning permission allows the development of land under the permission within 5 years confers a special right on the beneficiary of that permission. The five-year "window" for the 2009 permission coincided with the 2012 Direction coming into effect. Accordingly any act carried out within that period must be judged positively and the 2012 Direction given application to the entire period.

3.27 This approach is further exemplified by the broad view that has been taken over the years by the courts in terms of what constitutes commencement.

3.28 A large number of cases support the proposition that the threshold for what constitutes development is very low when considering if development has commenced. This is exemplified in *Commercial Land Ltd (as further referenced below)* and reference/consideration of other cases within the judgement. The judgement of *R (on the application of Brent LBC) v SoS for Communities and Local Government [2008] EWHC 1991 (admin)* also confirms that the threshold, considered objectively, is very low.

3.29 The issue of the threshold for commencement of development has been considered by the Commission on a number of occasions, and the Commission's approach is exemplified by the decision of the Commissioner in Appeal Reference 1999/A052 (paras 5.6 and 5.7):

> *"the issue has been tested in the courts giving some further guidance as to what constitutes commencement. In the case of Thayer v The Secretary of State for the Environment (1992) JPL 264 it was held that the removal of a twelve foot section of roadside hedge and some surface earth in preparation for the driveway to a house and garage was held to be commencement of development. The marking out of the line and width of a road with pegs amounting to an operation in the course of laying out a road was held as commencement in the case of Malvern Hills District Council-v-Secretary of State for the Environment and Robert Barnes & Company (1982) JPL 439. The work done however must not merely be some development but must be part of the development covered by the planning permission in question, see Campbell-v-Secretary of State (1997 SCLR 197)..*
>
> In the case of East Dunbartonshire Council-v-the Secretary of State for Scotland and another (1999) PLR 53 the court stated *"it is no doubt natural to feel that it would be unsatisfactory if the person entitled to the benefit of a planning permission could keep it in being by carrying out some work that could be regarded as a mere*

token or pretence. It seems to us, however, that the solution to that problem, if it is a problem, is more likely to be found by applying the objective approach and considering first whether what has been done has been done in accordance with the relevant planning permission and second whether it is material in the sense of not being de minimis". In this case the position and nature of the works indicate to me that they are in accordance with the planning permission granted in 1965. In addition the digging of a trench and the laying of foundations are in my view material being works constituting part of the construction of the dwelling house."

3.30 The Commission took the view that works that were more than "*de minimis*" and in accordance with the relevant planning permission were sufficient to constitute commencement of development. These cases support our proposition that the commencement of development must be construed broadly and positively.

3.31 With the five year life of a planning permission there is no stipulation (subject to pre-commencement conditions) as to when the development must be commenced; simply that it must occur within that five year period. The plain fact is that demolition took place within the five year life of the 2009 permission. As of 19 September 2012 that fact would be construed as development. The intent therefore of the 1991 Order and the 2012 Direction should be interpreted positively – in the absence of any specific direction to the contrary – and to the benefit of the appellant:

3.32 This positive approach is in accordance with the Human Rights Act 1998 Section 3(1) which states:

"So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights"

3.33 One of the Convention Rights under Protocol 1, Article 1: Protection of property is that:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law".

3.34 Accordingly the ambiguity in the legislation should be interpreted to give effect to the Appellant's right to the "*peaceful enjoyment*" of his property. Interpreting the 2012 Direction to deprive the Appellant of his planning permission and right to develop the property would deprive him of this right.

3.35 Further, the requirement for demolition is specified both as part of the description of the development but also as condition 3 of the 2009 permission. Demolition was an intrinsic part of the development that was permitted, and failure to demolish the property (either partly or fully) would have been a breach of condition. That condition was a continuing obligation under the 2009 permission which encompassed the period within which the 2012 Direction came into force. This further strengthens the proposition that is the fact of demolition with the window of the permission that must be considered; not the specific date at which the act took place. Where there is ambiguity in law favour should fall with the appellant.

3.36 The Council have relied on a number of cases to its view that demolition did not constitute development. These cases can all be distinguished from the present case on their facts, as set out below.

Commercial Land Ltd and Imperial Resources SA v SoS [2002] EWHC 1264 (Admin)

3.37 This case related to whether relatively minor building operations constituted commencement of development. The Council contends that the case supports the proposition that demolition "*could be argued to be superfluous to the description as demolition in itself was not development*". The case relates to whether relatively small scale construction works constituted development and is entirely distinguishable. Further there is no clear statement in support of the point that the Council seeks to argue.

3.38 In fact, the case emphasises the importance of interpreting development broadly in favour of the beneficiary of a planning permission, noting that relatively small-scale works are sufficient to implement a planning permission.

Staffordshire County Council v Riley [2001] EWCA Civ 257

3.39 This case considers whether stripping of topsoil constituted lawful commencement of a planning permission for a quarry. The court found that removal of topsoil was capable of being a *"distinct operation separate from the winning and working of minerals*" – but this was predicated on the specific facts of that case. It does not establish a firm principle that can be relied upon in this appeal.

Cambridge City Council v SoS & Milton Park Investments Ltd [1992] 3 PLR 4

3.40 The Council cites this case in support of its view that the 2012 Direction cannot act retrospectively. Again the judgement was very fact specific. At the time of the decision, a change in the English legislation that was to bring demolition into the definition of development had not occurred and the court held that "we must construe the law as it is at present". It went no further and did not address the point that the Council claims.

3.41 It is the Appellant's contention that development commenced during the lifetime of the 2009 permission. It is not the specific date of commencement that is critical in this case, rather the fact that commencement took place whilst the permission was extant.

3.42 The 2012 Direction amended the 1991 Order such that demolition fell within the definition of "development" and this came into force during the lifetime of the 2009 permission. Accordingly, the *fact* that demolition of the former property took place – in compliance with the condition 3 of the permission – during the life of the permission means that it must be considered "development". The actual date of the demolition – other than the fact that it took place during the life of the permission which in turn coincided with the 2012 Direction – is not relevant.

4.0 THE PLANNING AUTHORITY'S CASE

4.1 The application seeks confirmation that as a result of works carried out on the site the completion of the dwelling granted planning permission (C/2009/0391/F) would be lawful.

4.2 On 11 November 2009 full planning permission (C/2009/0391/F) subject to conditions was granted for the '*demolition of a dwelling house and construction of replacement dwelling with detached garage*' on the appeal site. Condition 02 required the

development permitted on the site to have begun 5 years from the date of the permission. Development therefore had to commence before 10 November 2014. Condition 03 required that the construction of the dwelling permitted on the site, including the clearing of topsoil, shall not commence until the existing building, coloured green on the approved plan No. 01, date stamped 29 September 2009 is demolished, all rubble and foundations removed and the site restored in accordance with the details on the approved plans.

4.3 During the life of permission C/2009/0391/F, demolition of the (then) existing dwelling house was carried out together with some other work including: alterations to the existing access; hedge removal; fence erection; stoning of existing laneway and; fencing to existing laneway. All of these operations are likely to be considered *de minimis* and as such do not constitute a material start. The appellant has focused on the significance of the demolition of the dwelling as an act of development, particularly as 'demolition' is specified in the description. Whilst negative conditions regarding access have been implemented by reason of their form they do not represent a material start to the construction of the replacement dwelling approved on the site. The pre commencement conditions all relate to works required to take place prior to any development on the site they do not constitute development. For development to have commenced you would expect to see the digging of foundations.

4.4 Demolition was not part of the meaning of development as expressed in Article 11 of The Planning (Northern Ireland) Order 1991. The Planning Amendment (Northern Ireland) Order 2003 introduced an amendment to Article 11 of the 1991 Order to include demolition in the meaning of development. The explanatory note said that Article 18 of the 2003 Order introduced an amendment that all demolition comes within the meaning of development for planning purposes. However, for the time being, it continued, only buildings in Areas of Townscape Character and those whose demolition is subject to planning control, for example listed buildings are subject to this regime. This was achieved by a Departmental Direction under A11 (2) (f) specifying those buildings whose demolition does not come within the meaning of development for planning purposes and those buildings which do.

4.5 The Planning (Demolition-Description of Buildings) Direction 2009, which came into operation on 02 April 2009, states that demolition of "*any building not within an area of townscape character or an area of village character*" shall not be taken for the purposes of the 1991 Order to involve the development of land. The building on the site was demolished before the 11 November 2009 therefore demolition of the subject building at this time did not constitute development.

4.6 Further to this, legislation changed again on 19 September 2012. At this point in accordance with the Planning (Demolition-Description of Buildings) Direction 2012 made demolition permitted development. While this legislation changed during the 5 year life of the permission, it changed subsequent to the act of demolition on the site.

4.7 The appellant has argued that development has lawfully commenced given:

- Demolition was specifically stated as part of the approved permission description;
- Demolition took place within the life of the permission;
- Demolition became permitted development during the 5 year life of the permission (albeit after the building itself was demolished) and;
- Prevailing legislation provides that demolition is permitted development

4.8 As demolition was included within the development description, it could be taken to be development that formed part of the permission. This point is referred to in *Commercial Land Ltd and Imperial Resources SA v SoS (2003)* and *Staffordshire County Council v Riley (2002)*. These cases highlight that for a material operation to be comprised in the development, it must be *referable* to the development that had been permitted. While demolition was specifically mentioned in the description here, this could be argued to be superfluous to the description as demolition in itself was not development. Therefore demolition of the building could be argued to be preparatory to the approved development, rather than part of it.

4.9 With regard to the fact that demolition took place during the life of the permission, we have verifiable evidence that this was the case. A submitted aerial photograph demonstrates this – demolition occurred prior to 08 April 2011 before the 2012 Direction was issued.

4.10 Demolition did become "permitted" development rather than "not taken to involve development" during the life of the permission. However, this change took place post the act of demolition and as such, cannot be argued to constitute development. This is borne out in *Cambridge City Council v SoS & Milton Park Investments Ltd (1992)* which advised that prior to a specific date (in that case 1992), demolition was not viewed as a building operation and could not therefore have been a material operation for the purpose of commencing the development.

4.11 Careful consideration has been given to the application. Having regard to all four points, it is considered that in this specific case having regard to the terms of the permission, the work that took place, when that work took place and prevailing legislation at that time, demolition cannot be considered to have commenced the development. It is considered that the operations do not constitute a lawful start of the permission for the replacement dwelling C/2009/0391/F.

4.12 As account of the relevant legislation and guidance has been considered in this case no harm to the appellant's human rights arises. In this case the appellant did not go far enough to establish development had commenced on the site and therefore the planning permission (C/2009/0391/F) has lapsed and the CLOPUD in this case cannot be issued

5.0 CONSIDERATION

5.1 The main issue in this appeal is whether development has lawfully commenced to allow the completion of the development of a replacement dwelling and detached garage on the site.

5.2 The Planning Act (Northern Ireland) 2011 came into operation on the 1 April 2015 and replaced the Planning (Northern Ireland) Order 1991. The appeal before me relates to events relevant to the time of the Planning Order, it is therefore necessary I consider the matters before me in the context of the prevailing legislation at the time when the planning permission was extant on the site.

5.3 On the 11 November 2009, subject to ten planning conditions, full planning permission C/2009/0391/F was granted on the site. For the planning permission to remain live development must have commenced on the site prior 11 November 2014.

5.4 The purpose of Article 34 of the Planning (NI) Order 1991, which relates to the duration of planning permission, is to bring to an end permissions not begun within a specified period in order to prevent an accumulation of unimplemented permissions and allow proposals to be reviewed periodically in light of changing circumstances. This is a longstanding feature of the development management system throughout the UK, including Northern Ireland, and it is clear that successive lawmakers have considered this to be in the public interest.

5.5 Article 36 of the Order sets out how Article 34 is to be interpreted. It covers most but not all development as defined by Article 11. It is silent, for example, on development consisting solely of engineering operations and on development consisting solely of the demolition of a building. In cases where Article 36 does not assist, it is a matter of fact and degree for the Planning Authority or, on appeal, the Commission as to whether permission has begun timeously.

5.6 Article 36 (1) 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. Because the approved development included the erection of buildings, Article 36(1) (a) applies in this case. It therefore must be determined if the works undertaken by the appellant involved any work of construction in the course of the erection of the buildings.

5.7 Conditions 1, 3, 6 and 7 all require works to be undertaken before the commencement of development on the site. Such pre commencement conditions play an important role within a planning permission. Until pre commencement conditions have been satisfied, a planning permission cannot be implemented. Notwithstanding that works have taken place on the appeal site which meet some of the pre-commencement requirements of the planning permission, the works carried out do not amount to any work of construction in the course of erection of the buildings.

5.8 Whilst demolition is referred to in the description of proposal in the planning permission and demolition has taken place on the site, the development approved on the site included the erection of buildings. This is the decisive fact in this appeal. The focus is on the buildings. It does not matter whether planning permission was required for demolition. The Demolition (Description of Buildings) Directions 2009 and 2012 are therefore of no assistance in determining this appeal.

5.9 The approved development cannot be taken to have begun until the earliest date on which any work of construction in the course of erection of the replacement dwelling and garage began to be carried out. Article 36 (1) (a) does not mention the demolition of existing buildings on the site or the undertaking of access works for the site.

5.10 When I visited the site I noted the building rubble, which would indicate the demolition of the building on the site, and the electricity pole on the site. However there was no evidence of any construction work in the course of the erection of either of the approved buildings (dwelling or garage) on the site. Consequently the permission was not begun in accordance with Condition 2 of the planning permission on the site and a fresh planning permission would be required for the proposed dwelling with detached garage.

5.11 The provisions of Article 36 are significantly different to those of Section 56 of the Town and Country Planning Act 1990, which applies in England and Wales. Section 56 covers the full range of potential operations and uses falling within the statutory

definition of development and includes a liberal definition of "material operations" which embraces any work of demolition of a building.

5.12 The case law relied on by the appellant in this case related to GB is of little assistance in interpreting the relevant provisions of the Planning (NI) Order 1991. In so far as the former Commissioner relied on such case law in his report on appeal 1999/A052, I disagree with his approach. However, it seems that in that case there had been some work of construction in the course of the erection of a building.

5.13 The European Convention on Human Rights allows for the deprivation of possessions where that is in the public interest and subject to conditions provided by law. In this instance, the relevant statute sets out the circumstances in which a planning permission will come to an end. The provisions of Articles 34 and 36 are not retrospective or ambiguous, nor are they incompatible with the appellant's Convention rights. The plain words of these Articles, properly construed and applied, point clearly to the conclusion that the appeal must fail.

6.0 RECOMMENDATION

6.1 I recommend to the Commission that the appeal be dismissed.

This decision relates to Site Location Map submitted to the Council on 16 May 2016.

Causeway Coast & Glens Borough Council

Development Management Information Note 07

November 2024

Annex 1

Template for Requesting Referral of a Contentious Delegated Decision to Issue' List Planning Application to Planning Committee for Determination

The Protocol for the Operation of the Planning Committee provides for an Elected Member to request a planning application listed on the weekly list of 'contentious delegated decisions ready' to be referred to Planning Committee for determination. This request must be received by the Planning Department no later than 10am on the Monday following the issuing of the contentious list and submitted via email to planning@causewaycoastandglens.gov.uk.

Planning Reference	LA01/2024/1004/F
Elected Member Name	Cllr John McAuley
Contact Details	

Refusal Reason

1. The proposal is contrary to 6.73 of the Strategic Planning Policy for Northern Ireland (SPPS) and Policy CTY1 of Planning Policy Statement 21, Sustainable Development in the Countryside in that there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.

Responses

Reason 01

This is not an application for a new dwelling in accordance with para 6.73 of the SPPS or relevant policies within PPS21, this is an application to change the housetype of a previous approval that was previously started on site.

We have submitted evidence to show that a material start was made on this site.

An access has been created.

A portion of lane has been created.

Works around the site were undertaken.

Aerial photography is clear that works took place.

In application LA01/2020/0744/F planning committee disagreed with the case officers recommendation and allowed the application on the basis of the exact same information that relates to this planning application. This is therefore the example precedent.

At the LA01/2020/0744/F planning committee and site meeting, it was noted that a trench had been dug on site but that there was no evidence of concrete or foundations of a dwelling. Therefore the approval was granted on the strength of the access works and creation of visibility splays which in themselves are works of development.

There are many previous examples where Causeway coast and Glens has examined the issue of 'material start' and we consider that an appropriate start was made on this site, and the applicant should be allowed to proceed on the basis of the previous works.

In the above planning report, it is significant to note the similarity of the case, and we would submit that our situation and case is on all fours with the previous approval.

Our previous application was withdrawn as the application was attempted to be summarily dismissed by the planning office without any opportunity for discussion by planning committee and the application has been represented so that discussion might take place.

As agents, we do not agree with the case officers recommendation for refusal and would like the opportunity to present our case to the Planning Committee. We seek a full and thorough discussion at planning committee, and the attached planning committee report for LA01/2020/0744/F is extremely relevant.

Addendum

LA01/2024/1004/F

1.0 Update

1.1 Following deferral of the application at the April Planning Committee, additional information from the agent (21.05.2025) and a further letter of objection (25.05.2025) has been received.

1.2 The additional information submitted outlines that built elements have been discovered on site by the applicant, consisting of a 250mm pile on the placement of the previously approved dwelling and a 500mm diameter pipe that is located on the NW (northwest) portion of the site. Photographs have been submitted to document these elements. The agent advises that they are seeking to provide further information in relation to these features. Neighbour notification provides a time frame for comment of 14 days from the date of notice and was carried out 23rd May 2025.

1.3 The objection letter advises that an entrance to this site was made prior to June 2010. On the 12th of January 2011 C/2010/029/F was approved. In the 5 years after this approval no work was carried out on this site so the permission would have lapsed. The objection contends the proposal does not comply with PPS21 and should be refused.

1.4 To allow for the submission of further information by the agent, await the closure of the public notification period and allow the assessment of the submitted information, it is recommended that the application is deferred until the matter has been fully assessed.

2.0 Recommendation

2.1 That the Committee note the contents of this Addendum and agree with the recommendation to defer the application to allow the completion of the neighbour notification and assessment of the additional information.

Addendum 2

LA01/2024/1004/F

1.0 Update

1.1 Following deferral of the application at the April Planning Committee, additional information from the agent (21.05.2025) and a further letter of objection (25.05.2025) was received. The application was further deferred in May to allow for neighbour notification and assessment of the additional information.

1.2 The additional information submitted outlines that built elements have been discovered on site by the applicant, consisting of a 250mm pile on the placement of the previously approved dwelling and a 500mm diameter pipe that is located on the NW (northwest) portion of the site. Photographs have been submitted to document these elements. Neighbour notification expired on 13th June.

1.3 The agent previously advised that they were seeking to provide further information in relation to these features however, to date no further information has been received from the agent.

1.4 As it cannot be verified that the objects discovered by the applicant in the field relate to the previous permission, or the date upon which they were placed there, limited weight is afforded to the additional information.

1.5 It remains the Planning Department's opinion that it has not been demonstrated that a material start was made on the historic permission, and that a CLOPUD application is the appropriate method to establish the facts in this matter.

2.0 Recommendation

2.1 That the Committee note the contents of this Addendum and agree to Refuse planning permission as set out in Section 1 of the Planning Committee report.