

Planning Committee Report – LA01/2016/0023/LDP Certificate of Lawful Development	26th October 2016
Address: Land 115m North West of No. 214 Baranait Road, Tartakilly, Limavady	
PLANNING COMMITTEE	FOR DECISION

Linkage to Council Strategy (2015-19)	
Strategic Theme	Protecting and Enhancing our Environment and Assets
Outcome	Pro-active decision making which protects the natural features, characteristics and integrity of the Borough
Lead Officer	Principal Planning Officer/Development Management Manager
Cost: (If applicable)	N/a

<u>No:</u>	LA01/2016/0023/LDP	<u>Ward:</u> Benbradagh
<u>App Type:</u>	Certificate of Lawful Development Proposed	
<u>Address:</u>	Land 115m North West of No. 214 Baranailt Road, Tartakilly, Limavady	
<u>Proposal:</u>	Proposed completion of dwelling in accordance with plans approved under B/2001/0021/F	
<u>Con Area:</u>	N/A	<u>Valid Date:</u> 7 th January 2016
<u>Listed Building Grade:</u>	N/A	
<u>Agent:</u>	Donaldson Planning, 50a High Street, Holywood, BT18 9AE	
<u>Applicant:</u>	Reverend John Hemphill	
<u>Objections:</u>	0	<u>Petitions of Objection:</u> 0
<u>Support:</u>	0	<u>Petitions of Support:</u> 0

Drawings and additional information is available to view on the Planning Portal- www.planningni.gov.uk

1 RECOMMENDATION

- 1.1 That the Committee has taken into consideration and agrees with the reasons for the recommendation set out in section 10 and the consideration set out in section 8 and resolves to **REFUSE** to certify the proposed development as lawful.

2 SITE LOCATION & DESCRIPTION & CHARACTER OF AREA

- 2.1 The site is located on the Baranailt Road, Limavady within the rural area as designated in the Northern Area Plan 2016.

3 RELEVANT HISTORY

- 3.1 B/2001/0021/F - Erection of chalet dwelling and detached double domestic garage – Approved 10th May 2001

- 3.2 LA01/2015/0370/F - Retention and completion of chalet dwelling and detached double domestic garage. With associated alterations to ground levels using inert material to provide mounding and landscaping to curtilage (Amended siting for chalet dwelling and detached domestic garage approved under planning permission ref. no. B/2001/0021/F) – Recommended to Committee with the opinion to refuse on 26th October 2016.

4 THE APPLICATION

- 4.1 The proposal is for the proposed completion of a dwelling in accordance with plans approved under B/2001/0021/F.

5 PUBLICITY & CONSULTATIONS

- 5.1 As this application is for a Certificate of Lawfulness, there is no requirement to notify neighbours or to carry out consultations.

6 MATERIAL CONSIDERATIONS

- 6.1 The material considerations in this instance are Planning Act (NI) 2011, Section 170 and the information provided by the applicant upon which he builds his case.

7 RELEVANT POLICIES & GUIDANCE

- 7.1 There are no policies or guidance to consider in this instance as the Council can only consider whether or not the proposal is lawful, ie. in this instance that the dwelling previously approved can be completed without the need for further planning permission.

8 CONSIDERATIONS & ASSESSMENT

- 8.1 The main considerations in the determination of this is Section 170 of the Planning Act (Northern Ireland) 2011 which states that,
“(1) *If any person wishes to ascertain whether–*

- (a) any proposed use of buildings or other land; or*
- (b) any operations proposed to be carried out in, on, over or under land, would be lawful, that person may make an*

application for the purpose to the appropriate council specifying the land and describing the use or operations in question.

(2) If, on an application under this section, the council is provided with information satisfying it that the use or operations described in the application would be lawful if instituted or begun at the time of the application, it must issue a certificate to that effect; and in any other case it shall refuse the application.

In this case the applicant has put forward his case for lawfulness in that no enforcement action may then be taken in respect of completing a dwelling using approval B/2001/0021/F because it does not require planning permission.

- 8.2 Permission was originally granted on 10th May 2001 which means that for the completion of the dwelling to be lawful and to not require planning permission to build the dwelling, the applicant should have achieved all of the following:
- development should have commenced on the site by 10th May 2006,
 - any precommencement conditions should be adhered to and,
 - any construction carried out should be in accordance with the approved plans.
- 8.3 The agent has supplied 2 letters from contractors who carried out work on the site. Mr Harold Nutt states that he carried out drainage work and levelling of the hardcore during 2004. He then cleared the topsoil and dug the foundations, on every occasion using the present entrance. Mr Francis J O' Connor also states in writing that he hauled lorry loads of aggregate to construct the driveway at the "*place where the Rev Hemphill's new house was to be built*". he goes on to state that the entrance shown in the O.S photos dated 19th April 2003 is the only entrance that he used to access the site. Taken at face value both these letters show that building works were undertaken at the site in 2003 and 2004. This is further considered in paragraph 8.5.
- 8.4 The agent states that condition 02, which relates to access and visibility, has been complied with and condition 11 which

required levelling of the site does not go to the heart of the approval. In this instance I agree that while these are precommencement conditions they are not drafted in a manner which demands their compliance prior to commencement of other works. Considering this, failure to comply with these conditions is not fatal to the approval.

- 8.5 With regards as to whether the construction has been carried out in accordance with the approved plans, it appears that the dwelling on the ground differs from that approved under B/2001/0021/F in the following ways:
- It is not positioned in the same location within the site (reorientated North to South as opposed to West to East)
 - It is not the same house type as the dwelling approved (approved dwelling 7m, built 8.5m, plus design changes such as higher front porch, rearranged fenestration, addition of dining room to the rear.)
 - The dwelling under construction is not on the same land levels as those approved (increase in land height of up to 2.55m due to unauthorised infill)
 - The constructed driveway is approximately 10m to the South of that approved.
 - The garage is approximately 6m South of the location approved.
- 8.6 Due to the substantial differences in the permission granted and the actual dwelling constructed it can be stated that the works carried out were not for the purpose to which the permission relates. Considering this, on the balance of probability, no material start has been made by 10th May 2006 on the approval granted and the permission in question has now expired.
- 8.7 Because the permission has expired the dwelling as approved under B/2001/0021/F cannot be constructed lawfully.
- 8.8 This is supported by the PAC decision 2015/E0035 dated 23rd August 2016 which indicates that they consider that permission B/2001/0021/F has now expired. Notwithstanding that the PAC consider the dwelling constructed to be different to the one approved. they explain their conclusion that the permission has

expired by stating that, “*The access created was to facilitate the development alleged in the Notice and not that which received planning permission. It did not therefore constitute commencement of the development approved in May 2001. The 2001 permission has now expired and the appellant does not therefore have a valid ‘fallback’ position.*” This confirms that the previously approved dwelling can no longer be constructed lawfully as the planning permission has now expired.

9 CONCLUSION

- 9.1 The dwelling approved cannot be completed without the need for further planning permission. The planning permission previously granted under B/2001/0021/F was not implemented within the required timeframe, has now expired and cannot be constructed lawfully. Refusal is recommended

10. REFUSAL REASONS

- 10.1 The operation described in the First Schedule to this certificate in respect of the land specified in the Second Schedule to this certificate and edged in red on the plan attached to this certificate, would not be lawful within the meaning of Section 170 of the Planning Act (Northern Ireland) 2011, for the following reason:

The applicant has not satisfactorily demonstrated that approval B/2001/0021/F can be constructed lawfully.

