



Planning Committee Report LA01/2016/0046/F	28th March 2018
PLANNING COMMITTEE	

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	Development Management & Enforcement Manager
Cost: (If applicable)	N/a

<u>No:</u>	LA01/2016/0046/F	<u>Ward:</u>	Ballykelly
<u>App Type:</u>	Full		
<u>Address:</u>	To the rear of 53 Loughermore Road Ballykelly		
<u>Proposal:</u>	Proposed retrospective planning for the retention of agricultural buildings, 2no. new retaining walls and shutter tanks for dirty water collection and associated ground works		
<u>Con Area:</u>	N/A	<u>Valid Date:</u>	13.01.2016
<u>Listed Building Grade:</u>	N/A		
<u>Agent:</u>	D M Kearney Design, 2a Coleraine Road, Maghera, BT46 5BN		
<u>Applicant:</u>	Mr J Kelly - 42 Loughermore Road, Ballykelly, BT49 9HY		
<u>Objections:</u>	3	<u>Petitions of Objection:</u>	0
<u>Support:</u>	0	<u>Petitions of Support:</u>	0

Drawings and additional information are 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 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 application site to the rear of No. 53 Loughermore Rd, Ballykelly. The application site is located immediately adjacent to the Ballykelly River and has already been developed with the removal of a large amount of trees and vegetation, works carried out to the river corridor, levelling and hard coring of the yard and construction of three linked sheds and a detached shed having already taken place. There is one existing and one proposed retaining walls along the north western side of the sheds due to the steep vegetated embankment in which the sheds are cut into. The sheds consist of a mixture of storage sheds for machinery and feed stocks and animals pens.
- 2.2 The site is located within the rural area outside any settlement limit as defined in the Northern Area Plan 2016, and is located approximately 2.5km south of Ballykelly. The application site is located within Ballykelly Glen SLNCI which comprises the River Corridor of the Ballykelly River which is defined by mature vegetation along both sides and it is this mature vegetated river bank which separates the site from the Loughermore Rd. The area is predominately agricultural in nature although there are a number of single dwellings in close proximity to the application site. No. 51 is located a short distance west of the site and No. 53 is located a short distance north of the site. There are two semi-detached dwellings a short distance to the south east of the application site (Nos. 56 and 58).

3 RELEVANT HISTORY

No other relevant planning history on site.

4 THE APPLICATION

- 4.1 This is an application for full planning permission for the retention of agricultural buildings, 2no. new retaining walls and shutter tanks for dirty water collection and associated ground works.

5 PUBLICITY & CONSULTATIONS

5.1 External

Neighbours: Three letters of objection were submitted to the proposal

5.2 Internal

TransportNI – No objection.

Rivers Agency – No objection.

DAERA – No objection.

Shared Environmental Services – No objection.

DAERA Natural Environment Division – Recommend Refusal.

DAERA Drainage and Water – No objection.

Environmental Health – No objection.

Loughs Agency – No objection.

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:

- 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 2: Natural Heritage

Planning Policy Statement 3: Access, Movement and Parking

Planning Policy Statement 15: Planning and Flood Risk

Planning Policy Statement 21: Sustainable Development in the Countryside

8.0 CONSIDERATIONS & ASSESSMENT

- 8.1 The main considerations in the determination of this planning application is the principle of development, integration and impact on rural character, impact on the natural environment, access and flooding.
- 8.2 The site is located within the rural area as defined within the Northern Area Plan 2016. The site is located within the designated Ballykelly Glen Site of Local Nature Conservation Importance as defined in the Northern Area Plan 2016. The main policy consideration is contained within the Northern Area Plan 2016, the Strategic Planning Policy Statement and the relevant Planning Policy Statements. As this is a proposal for agricultural development within an environmental designation, the main policy considerations are paragraphs 6.70, 6.73

and 6.192 of the SPPS, Policies CTY 1, 12, 13 and 14 of PPS21 and Policy NH5 of PPS2.

Principle of Development

- 8.3 Paragraph 6.73 of the SPPS and Policy CTY1 of PPS21 outline the range of types of development that may be acceptable in principle in the countryside. In the case of agricultural development Policy CTY1 refers to Policy CTY12.
- 8.4 Paragraph 6.73 of the SPPS and Policy CTY 12 outline that provision can be made for development on an active and established farm where the proposal is necessary for the efficient use of the holding.
- 8.5 As part of the submission the applicant submitted a P1C form and farm maps which provided details of the farm business including the Business ID Number, herd number and details of the numbers of animals in the holding. Consultation with DAERA confirmed that the Business ID Number has not been in existence for more than 6 years and has not claimed Single Farm Payment, Less Favoured Area Compensatory Allowance or other Agri-Environment schemes in the last 6 years. As such the farm business has cannot be determined to meet the criteria for being classified as active and established.
- 8.6 The applicant rents 14 hectares of land from a Mr John Logue at Brockagh Rd, Eglinton. The parcel of land subject to this application which is located to the rear of No. 53 Loughermore Rd, is owned by the applicant's father, Mr Brendan Kelly. The P1C form submitted with the application outlines that the applicant could keep between 50-60 head of cattle for fattening and owns a successful butchers business in Eglinton, and the animals, once slaughtered are butchered in the shop.
- 8.7 Both the SPPS and Policy CTY12 outline that a new building will be granted on an active and established holding. This shed is not located on a holding. The applicant states within the P1C form that the buildings at this location have been purpose built for the storage of animals, machinery and feed stock. However, in assessing this proposal it must be looked at in principal rather than taking regard to what currently occupies the application site. As such, looking at the application site to assess whether buildings on the site would be acceptable or not it must be considered whether the site forms part of an active and established holding. Prior to the removal of the trees and vegetation on the site the site was an undeveloped area of land along the river bank, which was not used for agricultural purposes.

The land was not used for agricultural purposes prior to the construction of the sheds, the first of which was under construction in April 2013. As such when looking at the principal of development at this site, the lands would not have constituted a farm holding and as such the buildings would not represent development on a holding.

- 8.8 Even when considering the change in use of the land which has occurred, the holding has not been established for six years and as such fails to meet site as they are distant from it. As such the proposal fails to the requirements of Policy CTY12. When assessing the farming activities of the applicant, the farming activities on the lands rented from Mr Logue cannot be considered to demonstrate an active holding at the application meet the requirements of Policy CTY12 in that the proposed development is not located on an active and established holding and their farm business has not been established for six years.
- 8.9 In terms of the need for the shed, the applicant states that at any time they can have 50-60 head of cattle. While there is a need to provide shelter for the applicant's animals in terms of welfare, the applicant has not provided any evidence of seeking alternative arrangements for housing the livestock, such as renting sheds from other farmers, or at the holding rented. Despite this, the fact remains that the applicant does not have an established business or holding for the required six years and as such is not entitled to a shed under this policy.

Integration and impact on rural character

- 8.10 Much of current planning policy underlines the importance of buildings integrating with their surroundings. Paragraph 6.70 of the SPPS states that all development in the countryside must integrate into its setting, respect rural character, and be appropriately designed. Criteria C of Policy CTY 12 requires new development to visually integrate into the local landscape and provide additional landscaping as necessary.
- 8.11 The sheds within the application comprise a block of three sheds in the southern end of the site, and a single detached shed in the northern section, which are constructed from rendered block walls with metal cladding to the upper levels and roof. The sheds have a mono-pitch roof with a shallow pitch giving a relatively low overall height of 4.1m above ground level. The sheds are finished in a solid concrete floor with straw bedding provided within the cattle pens. The block of three sheds contain a total floor area of 326m² and the detached shed a floor area of 108.5m².

8.12 The proposed development is located back from the Loughermore Rd and at a lower level than the road and is screened from views by mature vegetation along the eastern side of the river. Given the location of the site within the rural area, where there are numerous buildings of a similar scale and design, and the level of screening afforded to the buildings, it is considered that the buildings are appropriate to the location in terms of scale and character. In terms of the proposals ability to be integrated into the landscape it is considered that there would be no significant visual impact from the proposal given the mature vegetation which surrounds the sheds and provides a backdrop to the west of the shed, which consist of an embankment and trees. There are some filtered views through the mature vegetation where the proposed development can be detected when passing directly past the application site. However these are transient views which are short lived and would not see the development appear conspicuous in the landscape.

Impact on the natural environment

8.13 The application site is located within Ballykelly Glen Site of Local Nature Conservation Importance, which is designated within the Northern Area Plan for its biodiversity quality including long established woodland and river corridor habitat. Due to its proximity there is also the potential for pollution from the development leaching into the river which is a hydrological link to Lough Foyle SPA/Ramsar/ASSI. In addition, given the nature of the proposal there is the potential for ammonia emissions to impact upon numerous designated sites in the wider landscape.

8.14 During the processing of the application the applicant provided revised plans to show the hard cored yard adjacent the sheds to be finished in a sealed/impermeable surface with drainage channels throughout. These are to collect dirty water/effluent from the solid floor sheds and yard, and collect in a dirty water tank. The proposed yard is shown to be kerbed along the river corridor to ensure that there is no runoff from the yard directly to the river. Upon clarification that there will be no soakaways or sub-surface irrigation systems employed by the development, it is accepted that there will be no significant adverse impact on the aquatic environment of the adjacent watercourse which could lead to a detrimental impact on the designated Lough Foyle SPA, Ramsar and ASSI. In addition the applicant provided SCAIL modelling information with respect to the existing numbers of cattle in the herd/stored at the site and calculate the ammonia emission from the development. The ammonia levels projected outline that the

emissions are below the permitted threshold. In addition, the applicant has provided a manure export documentation which outlines how applicant intends to export the manure and dirty water from the site to designated lands provided within the submitted documentation. As such there should be no significant impact on designated sites due to nitrogen deposition resulting from ammonia emissions. The above issues have been accepted by both NIEA and Shared Environmental Services.

8.15 NIEA Natural Environment Division have assessed the proposed development in terms of the potential impact on the designated SLNCI which contains the Ballykelly River and mature woodland which is located along both sides of the river. The SLNCI was designated for its significant long established woodland and river corridor habitat, which was of high biodiversity value. Given the works carried out on the site, there has been an amount of tree removal and works carried out to the river corridor which has altered the width and route of the river. NIEA has assessed the proposal and have found that it would have an unacceptable adverse impact on the designated SLNCI, long established woodland and wetlands, which includes the river corridor. Policy NH5 of PPS 2 outlines that planning permission will not be granted for a development proposal which is not likely to result in an unacceptable adverse impact on, or damage to know ancient and long established woodland and wetlands, which includes river corridors. Policy ENV2 of the Northern Area Plan outlines that planning permission will not be granted for development that would be liable to have a significant adverse effect on the intrinsic nature conservation of a designated SLNCI. The site formed part of a continuous, linear wooded river corridor, which was of high biodiversity value for the surrounding area. The development here has caused loss of an important natural heritage feature worthy of protection, and has also fragmented the river corridor as a whole, weakening its overall value.

8.16 The applicant has proposed a small amount of compensatory planting within the site. However, NIEA has advised that the areas shown as proposed planting does not compensate for the loss of long-established woodland river corridor habitat, and part of a Site of Local Nature Conservation Importance that has occurred at this location. As such, given the extent of works carried out at this location there has been a significant adverse impact on the SLNCI and habitats of conservation importance the proposal is contrary to the Northern Area Plan and PPS2.

Access

8.17 Access to the site is proposed via the existing laneway onto Loughermore Rd, immediately adjacent and south of No. 53. The issue of road safety at the proposed entrance has been raised within the objections received in respect of the increased intensification of the existing access and limited visibility due to proximity of bend in the road and bridge at the entrance. DFI Roads has been consulted on the application and following the submission of revised plans, now have no objections. The proposal is therefore considered to comply with Policy AMP2 of PPS3.

Flooding

8.18 Part of the application site lies the fluvial floodplain of the Ballykelly River, which runs along the eastern boundary of the site. DFI Rivers initially responded that Policy FLD 1 of PPS 15 was not applicable. However, in a later email received 21/06/2017, have confirmed that the site does indeed lie within the floodplain but following a site inspection have judged that the site should not flood.

8.19 Works have been carried out along the watercourse in order to accommodate the hard standing area adjacent the sheds which have resulted in alterations to the width and natural path of the watercourse. Rivers outlined in their initial response that Schedule 6 consent is required for works to or immediately adjacent a watercourse. It has been raised within the objections that the applicant has carried out the works to the watercourse without consent from DFI Rivers. DFI Rivers has confirmed that the schedule 6 issues have been resolved and that there is no schedule 6 enforcement action being pursued. Therefore in terms of PPS15, following the advice of DFI Rivers the site is unlikely to be affected by flooding and is therefore in compliance with PPS15.

Representations/objections

8.20 The objections to the proposal raised other issues in addition to those relating to access and the watercourse in the paragraphs above. One objection notes that the red line of the application site incorporates lands not owned by the applicant or the person served notice on. This issue was queried and the application boundary was reduced to exclude the lands which belonged to the objector, with the applicant also clarifying that the lands within the red line of the application site belong to his father. The objector was re-notified upon receipt of the amended red line and certificate c and no further objection was received on this issue. It should also be noted that issues surrounding

land ownership are a civil matter which lie outside the remit of planning permission.

8.21 An objection notes a right of way through the site, and that the buildings are located on the right of way. However it is unclear as to the exact location of the right of way or whether it has been blocked off. No map has been provided to denote the exact route or width of the right of way. Again this issue is a civil matter and should be addressed through the objector's solicitor.

9.0 CONCLUSION

9.1 The applicant does not have an active and established farm business or holding as required as required by Policy CTY12 and therefore fails to meet the principle for agricultural building(s). The sheds are not located on a farm holding and there is no farm business which has been established for six years. In addition, the proposal will have a significant adverse impact on the designated Ballykelly Glen SLNCI and long established woodland and wetland and is therefore contrary to the Paragraph 6.192 of the SPPS and Policy NH5 of PPS2, as well as Policy ENV2 of the Northern Area Plan. Refusal is recommended.

10 Refusal Reasons

10.1 Reasons for Refusal:

- 1 The proposal is contrary to Paragraph 6.73 of the Strategic Planning Policy Statement for Northern Ireland and Policy CTY12 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the development is not located on a farm holding and the farm business has not been established for six years and the development, if permitted, would have an adverse impact on the natural heritage.
- 2 The proposal is contrary to the Northern Area Plan 2016, Policy Env 2, in that development would, if permitted, be liable to have a significant effect on the intrinsic nature conservation interest of a designated Site of Local Nature Conservation Importance, namely, Ballykelly Glen SLNCI.

- 3 The proposal is contrary to Planning Policy Statement 2: Natural Heritage, Policy NH5, and the Strategic Planning Policy Statement for Northern Ireland 6.192, in that it would have an unacceptable adverse impact on wetlands (including river corridors) and long-established woodland.

Site location

