

<b>Planning Committee Report LA01/2019/421/F</b>	<b>27<sup>th</sup> November 2019</b>
<b>PLANNING COMMITTEE</b>	

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

<b><u>No:</u></b>	<b>LA01/2019/0421/F</b>	<b><u>Ward:</u></b>	<b>Ballykelly</b>
<b><u>App Type:</u></b>	<b>Full Planning</b>		
<b><u>Address:</u></b>	<b>46 Ballykelly Road, Limavady</b>		
<b><u>Proposal:</u></b>	<b>Retention of 2.4m high security fence and proposed 2m fence and 800mm wall with 1.2m fence above.</b>		
<b><u>Con Area:</u></b>	<b>N/A</b>	<b><u>Valid Date:</u></b>	<b>16/04/2019</b>
<b><u>Listed Building Grade:</u></b>	<b>N/A</b>		
<b><u>Agent:</u></b>	<b>5050 Architecture, 3a Keldon Court, 17 Linenhall Street, Limavady</b>		
<b><u>Applicant:</u></b>	<b>Martin O'Hara, 46 Ballykelly Road, Limavady, BT49 9DS</b>		
<b><u>Objections:</u></b>	<b>3</b>	<b><u>Petitions of Objection:</u></b>	<b>0</b>
<b><u>Support:</u></b>	<b>0</b>	<b><u>Petitions of Support:</u></b>	<b>0</b>

## EXECUTIVE SUMMARY

- Planning permission is sought for the retention of 2.4m high security fence and proposed 2m fence and 800mm wall with 1.2m fence above.
- The site is located in open countryside, between the settlement development limits of Ballykelly and Limavady, along the Protected Route. The site is not subject to any other specific designations or zonings.
- The proposal seeks to enclose the area to the front of the existing buildings with 2m fencing along the front elevation, 0.8m natural stone wall with 1.2m security fencing above adjacent to the public road, and two gates enclosing the site.
- It is considered that the proposed fencing is unsympathetic in the rural location and is unduly prominent from the public road and has an unacceptable impact on rural character.
- DfI Roads and NED have been consulted and raise no objection.
- There have been three objections received to this application. Material planning matters raised in these objections include the proposal's impact on rural character, the impact on amenity of neighbouring buildings and the previously refused security fencing.
- The proposal is contrary to Paragraph 6.70 of the SPPS in that it does not integrate into its setting, respect rural character and is not appropriately designed. Refusal is recommended.

**Drawings and additional information are available to view on the Planning Portal- [www.planningni.gov.uk](http://www.planningni.gov.uk)**

## **1 RECOMMENDATION**

- 1.1 That the Committee has taken into consideration and agrees with the reasons for recommendation set out in Section 9 and the policies and guidance in sections 7 and 8 and resolves to **REFUSE PERMISSION** subject to the reason set out in section 10.

## **2 SITE LOCATION & DESCRIPTION**

- 2.1 The site is located south of the Ballykelly Road, approx. 1 mile east of Ballykelly. The surrounding area is rural in nature, characterised by agricultural fields and detached dwellings and a small number of commercial properties set back from the public road.
- 2.2 The location features a modest building used for the sale of vehicles, Martin O'Hara and Sons, with a larger building operating under the name Rascahan House adjacent. The application site engulfs the lay by area to the front of these buildings and continues around the side and rear of Martin O'Hara Sales. The site is separated from the public road by an approx. 2.5m grass strip.
- 2.3 The application site sits outside of the settlement development limits of Ballykelly, as defined in the Northern Area Plan. It is situated on a Protected Route. The site not subject to any other specific zonings or designations.

## **3 RELEVANT HISTORY**

- 3.1 B/2007/0157/F – Retention and extension of existing car parking area, erection of security fencing– Refused 12<sup>th</sup> March 2012

## **4 THE APPLICATION**

- 4.1 Full Planning Permission is sought for the retention of 2.4m high security fence to the side and rear, and a proposed 2m fence and 0.8m wall with 1.2m fence above.

- 4.2 The original proposal sought permission for 2.4m high security fencing. Following a meeting with the agent and applicant, an amended scheme was submitted on 3<sup>rd</sup> August 2019, revising and reducing the scheme from a proposed 2.4metre high security fence & gates and retention of 2.4 metre high security fence to western boundary.
- 4.3 The proposed siting of the fence is located within the existing lay by to the front of the buildings. The proposed wall and fencing run adjacent to the Ballykelly Road, separated by an approx. 2.5m wide grass strip, with the 2m fence proposed to run adjacent to the building frontage at 44a and 46 Ballykelly Road. The application also proposes a 2m gate at each entrance to the site from the existing lay by.

### **Habitats Regulation Assessment**

- 4.4 The potential impact this proposal on Special Areas of Conservation, Special Protection Areas and Ramsar sites has been assessed in accordance with the requirements of Regulation 43 (1) of the Conservation (Natural Habitats, etc) Regulations (Northern Ireland) 1995 (as amended). The Proposal would not be likely to have a significant effect on the Features, conservation objectives or status of any of these sites.

## **5 PUBLICITY & CONSULTATIONS**

### **5.1 External**

3 objections have been received in relation to this application.

### **5.2 Internal**

**DfI Roads** has no objection to the proposal

**DAERA Natural Environment Division** has no objection to the proposal

## **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 both a new local plan strategy is adopted, councils will apply specified retained operational policies.
- 6.5 Due weight should be given to the relevant policies in the development plan.
- 6.6 All material considerations and any policy conflicts are identified in the “Considerations and Assessment” section of the report.

## **7 RELEVANT POLICIES & GUIDANCE**

Northern Area Plan 2016

Strategic Planning Policy Statement (SPPS)

Planning Policy Statement 21 PPS21; Sustainable Development in the Countryside

## **8 CONSIDERATIONS & ASSESSMENT**

- 8.1 The main considerations in the determination of this application relate to the principle and visual impact, permitted development, road safety and; objections.

## **Planning Policy**

- 8.2 The proposal must be considered having regard to the SPPS, PPS policy documents and supplementary planning guidance specified above.
- 8.3 The site is located in the open countryside located between the settlement development limit of Ballykelly and Limavady, as defined in the Northern Area Plan 2016. There are no formal plan designations relating to the site, although it is located along a Protected Route.
- 8.4 The immediate area is characterised by agricultural fields to the north, east and west, and the detached buildings and associated hardstanding at the rear to the south, with agricultural fields beyond these. Due to the positioning of the proposal completely to the front of the buildings, it would be visible when approaching from both the east and west.

## **Principle and Visual Impact**

- 8.5 Policy CTY 1 sets out the types of development considered acceptable subject to satisfying specific policy tests. Planning Policy Statement 21 – Sustainable Development in the Countryside. The main objectives of PPS 21 include to conserve the landscape and natural resources of the rural area and to and to protect it from excessive, inappropriate or obtrusive development and from the actual or potential effects of pollution, and to promote high standards in the design, siting and landscaping of development in the countryside. Policy CTY13 – Integration and Design of Buildings in the Countryside focuses on the development of new buildings, however in this instance it is necessary to consider criterion (e) which states that development will be unacceptable where ancillary works do not integrate with their surroundings. Policy CTY14 – Rural Character also provides policy context for new buildings in the countryside, however criterion (e) states that development would be unacceptable where the impact of ancillary works (with the exception of necessary visibility splays) would damage rural character.

- 8.6 The proposed security fencing and gates are considered to be ancillary to the car sales and display space associated with 46 Ballykelly Road. Given the foregoing, Policies CTY 13 and 14 specifically relate to new buildings and their ancillary works, thus provide background guidance only. For this reason, the SPPS is considered to be best placed for considering this proposal and will be the policy basis for this assessment and determination. The Strategic Planning Policy Statement for Northern Ireland (SPPS) (Paragraph 6.70) applies to the proposed fencing. The policy states that all development in the countryside must integrate into its setting, respect rural character, and be appropriately designed.
- 8.7 There are critical views when travelling east and west along the Ballykelly Road. Views towards the site are relatively unrestricted, and remain within your line of sight for a period of travel. The proposal is considered to have a high level of visibility, given the openness of the site and the two layers of fencing of a highly industrious appearance to the front of the principal building line. Whilst the application site hosts a commercial property, it must be assessed within its wider rural location, and how any proposal respects and reflects the overall character.
- 8.8 Furthermore, the application site is open and visible when considering the separation distance between the building frontages and the public road. There are no other examples of security fencing of this scale or design within the vicinity of the application site. The application site is rural in nature, where it is considered that the visual amenity would be detrimentally interrupted by the incongruous nature of the proposal, and prominent when viewed from the public road.
- 8.9 The agent submitted a Planning Statement on 2<sup>nd</sup> August 2019 which presents a number of examples of security fencing, none of which are comparable as they are either within settlements, not immediately adjacent to the roadside, or are screened through vegetation. Such screening was suggested to the applicant at an office meeting, however amended plans propose the 0.8m wall rather than any vegetation to screen the proposal. This amended scheme still proposes a structure measuring 2m in height, therefore its impact as a whole is being assessed, not the 1.2m fencing element alone. Taking the totality of the

scheme, which is located adjacent to the road side, a 2 metre high structure in proximity to the road, with little to soften its harsh appearance which is akin to an industrial site, is considered unacceptable in the rural environment.

8.10 A previous application was refused on the site in March 2012 in which 2m high security fencing was proposed in the same position as that proposed.

8.11 Having regard to the SPPS, including the previous refusal on the application site, the design and its high visual impact, it is considered that the proposal does not comply with policy.

### **Permitted Development**

8.12 Throughout the processing of the application, the applicant and agent insisted on being told what they can or cannot do within Permitted Development (PD). It should be noted that this is a planning application, not a Certificate of Lawful Use or Development (CLUD). It was explained that Council can only give a formal determination on any matter relating to PD through a CLUD, and this cannot be provided outside this mechanism to protect all parties' interests. The reason for this is to ensure that should development ever be challenged, the CLUD protects all parties and negates the need for any further action. However, in the absence of a CLUD, enforcement action may be necessary.

8.13 A CLUD is a different process to a planning application. A CLUD certifies that a development proposal either meets the permitted development rights or it does not. However, in a planning application, professional judgement must be exercised, having regard to all the material considerations of the specific case.

8.14 For information, a CLUD has been submitted for a proposed 2m high security fence and 1m high stone wall & gates at this location (46 Ballykelly Road, Limavady). The reference is LA01/2019/1200/LDP and it remains under consideration with no decision at this time. It should be noted that what has been applied for through the CLUD submission is a lesser scheme than what planning permission is being sought.

## **Road Safety**

8.15 DfI Roads is the competent authority on roads matters and was consulted in relation to the proposed impact on road safety and on an objection. DfI Roads raises no objection to the proposal and it is considered the proposal will not have an unacceptable impact on road safety.

## **Objections**

8.16 To date, three objections have been received in relation to this application, which are either from or representing Rascahan House (44a Ballykelly Road).

8.17 The first objection, received on 3rd May 2019, was from Greer Hamilton Gailey Solicitors on behalf of 44a Ballykelly Road. It states that the occupier and his predecessors in title have enjoyed a right of way over the land which is proposed to be sectioned and enclosed in this application, and provided a map showing this right of way. The objection relates to the originally proposed 2.4m fence, and indicated that this would be unduly oppressive and would restrict the views and light which Rascahan House currently benefits from.

8.18 In response to this objection received on 3rd May, R.G Connell and Son Solicitors, who act on behalf of the applicant, submitted a rebuttal. The letter dated 31st May 2019 claims that the owner or occupier of Rascahan House does not have right of way, nor do they have any right to park on any part of this property. It also does not accept that the proposal would be unduly oppressive in appearance, and that a landowner has no right to a view.

8.19 A second objection was received on 7th May 2019 from the lessee and caretaker of Rascahan House. It contains a number of concerns relating to the visual impact the proposal would have, the right of way issue discussed in the previous objection, previous planning history on the site and the impact that the proposal would have on the amenity of Rascahan House, namely the views from the ground floor windows.

8.20 Following the submission of amended plans, neighbours and objectors were re-notified, after which a third objection was

received. This was a further objection from the lessee of Rascahan House on 22nd August 2019. It claims that the use of the layby as a passing area, parking area and common access is historical and has been in use since the 1980s following the cease of use of the site by Burmagh Oil. The objection contains information about the present levels of traffic and safety of the portion of road to the front of the application site, and implies that the proposal would have a detrimental impact to same. It also states that the proposed fence and gates leaves minimal driveway space for Nos. 44 and 44a. The objection quotes the Community Strategy document from the Causeway Coast and Glens website and outlines the use of Rascahan House as a community hub. It states that this proposal will be detrimental to the services being offered through Rascahan House. This objection also contained information about the fauna in surrounding area, and called for Natural Environment Division to be consulted. NED was consulted in this regard and is content with the proposal.

8.21 Matters, such as a right of way are civil matters between the 2 parties. However, within these objections, material planning matters have been raised such as impact on rural character, the impact on amenity of neighbouring buildings and the previously refused security fencing. Having regard to the objections, the proposal is considered unacceptable, as set out within this report.

## **9 CONCLUSION**

9.1 The proposal is considered unacceptable in this location having regard to the Northern Area Plan and all other material considerations. The fencing is unsympathetic in this rural area and is unduly prominent from the public road. The proposal is considered to be contrary to the SPPS, and refusal is recommended.

## **10 REFUSAL REASON:**

10.1 The proposal is contrary to Paragraph 6.70 of the SPPS in that it does not integrate into its setting, respect rural character, and is not appropriately designed.



# Block Plan

