

Planning Committee Report LA01/2017/1231/O	27th March 2019
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>App No:</u>	LA01/2017/1231/O	<u>Ward:</u>	Greysteel
<u>App Type:</u>	Outline Planning		
<u>Address:</u>	Lands 25m North East of No. 307 Clooney Road, Carrickhugh, Ballykelly, BT49 9JE		
<u>Proposal:</u>	Proposed site for a dwelling located within an existing cluster at Carrickhugh for a key worker related to the adjoining car sales business		
<u>Con Area:</u>	N/A	<u>Valid Date:</u>	21.09.2017
<u>Listed Building Grade:</u>	N/A		
Applicant:	Gerald O Hara, James O Hara & Sons Motors, 319 Clooney Road, Limavady, BT49 9JE		
Agent:	AQB Architectural Workshop Ltd, 12a Ebrington Terrace, Derry, BT47 6JS		
Objections: 0	Petitions of Objection: 0		
Support: 0	Petitions of Support: 0		

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

1.0 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** planning permission subject to the reasons set out in section 10.

2.0 SITE LOCATION & DESCRIPTION

- 2.1 The application site is described as being 25m North East of No. 307 Clooney Rd, Carrickhugh, Ballykelly. The application site is contrived from the western portion of an existing agricultural field which is located to the southern end of the O'Hara group car sales/parts complex. The application site rises in a southern direction from the northern boundary, and will see the dwelling sited in the southern and most elevated portion of the site. The site is accessed via an existing private laneway, which runs alongside another existing laneway which serves as access to the four existing dwellings to the south west of the site. The south western site boundary is defined by an earth ditch and hedge approximately 1.8m in height, which separates the two laneways running parallel to each other. The northern site boundary is defined by a timber ranch fence, while the southern is defined by a post and wire fence. The north eastern boundary is undefined.
- 2.2 The application site is located within the rural area outside of any settlement limit as defined in the Northern Area Plan 2016. The application site is located between the settlements of Greysteel and Ballykelly and is located off the Clooney Rd which is a Protected Route. The application site is located within a relatively built up area which comprises a number of residential dwellings and commercial businesses. There is a section of the North West Gas Pipeline which runs through the application site.

3.0 RELEVANT HISTORY

- 3.1 B/2003/0031/F- Construction of an underground pipeline, 450mm diameter and maximum working pressure of 85 bar with one number above ground installation (AGI) - Land within the Limavady Borough Council area – Approved 11.12.2003

4.0 THE APPLICATION

- 4.1 Outline Planning Permission is sought for a proposed dwelling, within an existing cluster for a worker associated with the nearby O'Hara car complex. The application site is located within an agricultural field to the rear of a hard-cored car forecourt. There is a major gas pipeline which runs through the northern section of the application site. No plans relating to the scale and design of the dwelling have been submitted.

5.0 PUBLICITY & CONSULTATIONS

5.1 External:

Neighbours: There are no objections to the proposal.

5.2 Internal:

DFI Roads: No objections.

Environmental Health: No objections.

NI Water: No objections.

DAERA Water Management Unit: No objections.

Loughs Agency: No objections.

Health and Safety Executive: No objections – advise consultation with Gas pipeline operator

GNI Ltd. (Pipeline operator): Site to south western corner of site due to proximity to pipeline

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)

PPS 2: Natural Heritage

PPS 3: Access, Movement and Parking

PPS 21: Sustainable Development in the Countryside

Supplementary Planning Guidance

Building on Tradition – A Sustainable Design Guide for the NI Countryside

Development Control Advice Note 15 Vehicular Access Standards

8.0 CONSIDERATIONS & ASSESSMENT

Planning Policy

- 8.1 The proposed dwelling must be considered having regard to the SPPS, PPS policy documents and supplementary planning guidance specified above. The main considerations in the determination of this application relate to: principle of development, integration, access and Habitat Regulations Assessment.

Principle of Development

- 8.2 The policies outlined in paragraph 6.73 of the SPPS and Policy CTY 1 of PPS 21 state that there are a range of types of development which are considered acceptable in principle in the countryside. Other types of development will only be permitted where there are overriding reasons why that development is essential and could not be located in a settlement, or it is otherwise allocated for development in a development plan. The application was submitted as a dwelling with an existing cluster and therefore falls to be assessed against Policy CTY 2a. The description also references the need for a worker for the adjoining car business. As such the proposal also falls to be considered against Policy CTY7.
- 8.3 Policy CTY 2a states that planning permission will be granted for a dwelling at an existing cluster of development provided all the following criteria are met:
- the cluster of development lies outside of a farm and consists of four or more buildings (excluding ancillary buildings such as garages, outbuildings and open sided structures) of which at least three are dwellings;

- the cluster appears as a visual entity in the local landscape;
- the cluster is associated with a focal point such as a social / community building/facility, or is located at a cross-roads,
- the identified site provides a suitable degree of enclosure and is bounded on at least two sides with other development in the cluster;
- development of the site can be absorbed into the existing cluster through rounding off and consolidation and will not significantly alter its existing character, or visually intrude into the open countryside; and
- development would not adversely impact on residential amenity.

- 8.4 The SPPS or Policy CTY 2a do not define what constitutes a cluster of development for the purpose of this planning policy. Planning appeal 2017/A0035 acknowledges this, but goes on to clarify that the first three criteria give an indication of its intended meaning, suggesting that in order to be a suitable cluster for development, the proposal should adhere to all three to be considered an appropriate cluster.
- 8.5 At this location there is a significant amount of development which is a mix of residential and commercial. At the immediate roadside (old loop road) there is a line of five dwellings (301, 303, 315, 317 and 319), with No. 319 registered as forming part of the James O'Hara and Sons Motors complex. In addition to these properties there are a number of larger commercial/industrial type buildings which are associated with the car sales and parts business, as well as a large area of hardstanding used for the display of vehicles for sale.
- 8.6 To the south/south west of the car sales business there is another group of buildings which consists of four dwellings (305, 307, 309 and 311) and associated outbuildings, and a number of sheds which appear in a poor state of repair. While there are in excess of the minimum of four buildings, at least three of which are dwellings at this location it is noted that there is both a distinct physical and visual break between the two groups of buildings. There is approximately 80m between the area of hardstanding along the northern site boundary and the dwelling at No. 307, with approximately 115m between No. 307 and the nearest building within the car complex. Criteria two of the policy requires the cluster of development to appear as a visual entity,

however given the physical and visual break between both groupings of buildings there is in essence two groups of development at this location, which appear as two separate entities.

- 8.7 The third criteria of Policy CTY2a outlines that the group of buildings which contribute to the formation of a cluster is associated with a focal point such as a social/community building/facility, or is located at a cross roads. The application site is set back from Clooney Rd along a private laneway. There is no cross roads within close proximity of the site which could reasonably link to the application site. Taking into account the nature and scale of the car complex to the north of the application site the Planning Department consider this facility to represent a suitable social/community facility. Given the requirements of the first three criteria of Policy CTY2a there is a suitable cluster of development at this location, however the extent of the cluster is restricted to the grouping of development immediately adjacent the loop road to the north of the application site. The four dwellings to the south west of the application site i.e. Nos. 305, 307, 309 and 311 are physically and visually detached from the northern grouping of development and as such are not considered to form part of the cluster of development at this location.
- 8.8 As outlined above at Paragraph 4.1 there is a gas pipeline which runs through the northern section of the application site. Given the restricted siting imposed by the wayleave and safety buffer zone associated with the pipeline, a dwelling on the application site would be restricted to the extreme south of the site which would be approximately 125-130m from the closest building at the O'Hara complex. Given the separation distance between the proposed dwelling and the O'Hara complex is too far removed from the northern cluster to be clearly associated with it. Any physical and visual interaction of a dwelling would be to the southern group of buildings only, which as outlined above is not considered part of a suitable cluster of development. The proposed dwelling would not be associated with a suitable cluster of development and is therefore contrary to Paragraph 6.73 of the SPPS and Policy CTY2a
- 8.9 The red line of the application site is extensive and takes in a large area, which is considerably larger than any residential plot in the area. Any dwelling approved within the confines of the red

line would be required to have a condition restricting the siting and curtilage to accord with the local prevailing character. Therefore a dwelling in the southern portion of the site would have a restricted curtilage which would not extend in its entirety to the northern field boundary abutting the car sales yard. The application site would only be defined by development along the western side by the dwellings at Nos. 307 and 311, which again is not part of the identified cluster. The proposal is therefore not bounded on two sides by development in the cluster and given the detached proximity to the identified cluster of development would not consolidate or round off the cluster of development, but would rather extend into the open countryside, and is therefore contrary to Paragraph 6.73 of the SPPS and Policy CTY2a.

- 8.10 In terms of the potential impact on residential amenity the siting of a dwelling in the southern part of the site is unlikely to cause any significant adverse impacts on the neighbouring properties, given the adequate separation. The detailed design of the dwelling could further alleviate any concerns of potential overlooking etc.
- 8.11 The applicant has also advanced a case of need for a dwelling in this location in association with a non-agricultural business enterprise. Policy CTY 7 of PPS 21 makes provision for a dwelling for non- agricultural business enterprises.
- 8.12 Policy CTY 7 outlines that planning permission will be granted for a dwelling house in connection with an established non-agricultural business enterprise where a site specific need can be clearly demonstrated that makes it essential for one of the firm's employees to live at the site of their work. Where such a need is accepted the dwelling house will need to be located beside, or within, the boundaries of the business enterprise and integrate with the buildings on the site.
- 8.13 In a statement submitted in support of the application it is outlined that the applicant currently resides at No. 319 with his sister. No. 319 is an integrated part of the O'Hara complex. The statement outlines that one of the reasons why a new dwelling is required is that both the applicant and his sister require their own independence. The statement outlines that the business had experienced issues surrounding theft and vandalism but it has

taken appropriate steps to address this such as CCTV, security fencing and dogs.

- 8.14 Paragraph 5.31 of PPS21 outlines that a business which has been operating satisfactorily without residential development will be required to demonstrate why accommodation is now necessary in order to enable the enterprise to function properly. Furthermore it should be noted that the need to provide improved security from theft/vandalism by having someone reside on the site is unlikely to warrant the grant of planning permission.
- 8.15 Policy CTY7 makes provisions for a dwelling where there is an essential need for an employee to reside at the specific location to allow the business to properly function. Given that the applicant currently resides at the business premises (No. 319), they already live at the most ideal location relative to the business. There is no evidence provided to suggest that an additional dwelling is required to ensure the proper functioning of the business or any evidence to suggest that the business is currently suffering or not operating properly in the absence of a dwelling. The applicant has not addressed the issue of why he would have to vacate the dwelling in which he currently resides rather than his sister.
- 8.16 A dwelling located on the only available portion of the application site i.e. southern corner, would see the dwelling removed from the business and would result in a lesser level of security/surveillance from the applicant/employee and would fail in its objective of providing adequate surveillance and security for the site compared to the address where the applicant currently resides. The applicant has not provided any evidence or recent problems with theft and/or vandalism such as police reports etc. and as outlined in PPS 21 a new dwelling is not acceptable for addressing this purpose in its own right. Regardless, the information provided outlines that the business appears to have taken necessary steps to address security at the site, and the presence of a number of other dwellings along the Clooney Rd, will provide additional natural surveillance to the site. It is not considered that a new dwelling is justified in this instance as the applicant/employee already resides at the business site and there are no other determining factors which merits a new dwelling as being necessary at this location and the proposal is contrary to Paragraph 6.73 of the SPPS and Policy CTY7 of PPS21. In addition as no overriding reason has

been forthcoming as to why the development is essential in this location the development is contrary to Policy CTY1.

Integration and Rural Character

8.17 In terms of integration the application site will be visible along some fleeting views when travelling along the Clooney Rd from Ballykelly towards Greysteel. From here the site will sit at an elevated position above the road but will have the backdrop of the dwellings at 307 and 311. The application site is only defined along the south western boundary by a ditch and hedge approximately 1.8m in height. The application site would require planting along the western, eastern and northern boundaries to provide a degree of enclosure to the application site, and integrate the dwelling sufficiently. Any dwelling on the application site would have to be restricted to being a modest single storey dwelling. Given the limited public interest/views in the application site and back drop afforded by existing development the site could satisfy the requirements of the SPPS and Policy CTY13 if conditioned appropriately.

Access

8.18 Access to the proposed site is from the old loop road which joins onto the Clooney Rd. DFI Roads have confirmed this is still a public road and as such access is not proposed onto a protected route. Amended plans have been submitted addressing the initial concerns of DFI Roads who, following re-consultation, have no objections. The proposal is therefore acceptable when assessed against the road safety policy requirements of the SPPS and PPS3.

Precedent cases

8.19 A supporting statement was submitted by the agent 19th April 2018 highlighted a number of cases which they feel are comparable to the proposal.

8.20 Application LA01/2015/1065/O sought permission for a dwelling under the consideration of Policy CTY7 of PPS21. The application was granted approval at the Planning Committee meeting on 25th September 2016 against the recommendation of

officials. The Planning Committee outlined that given the dual aspect of the business, operating both an end of life vehicle business and pyrotechnics, there was a need to site close to the business in order to assist with urgent response, and considering the sites distance from main towns where emergency services are located. This case is not directly comparable for the specific reasons provided by the Planning Committee for approval and due to the fact that the applicant, for this case, already resides at a dwelling immediately adjacent the business which is considered to offer the optimum location for surveillance and access to the business.

- 8.21 Application LA01/2016/0526/F sought permission for a dwelling within an existing cluster of development. This application was a renewal of a previous permission on the site which had established the principle of development within a cluster to be acceptable. The proposal was found to comply with Policy CTY2a in that the site was located within an existing cluster which appeared as a visual entity and comprised of a joinery works with an enterprise centre, was bounded on two sides by other development in the cluster and will not impact upon residential amenity. This example is not directly comparable to application LA01/2017/1231/O as the dwelling within this application will not be sited within the cluster, or bounded on two sides by development within the cluster.
- 8.22 Planning application LA07/2016/0556/O was allowed by the Planning Appeals Commission (2016/A0095). The Planning Appeals Commission set aside the third criteria of Policy CTY2a, which requires the application site to be associated with a focal point or located at a cross roads, on the advice of the Planning Authority in that area, and considered that the triangular site met the remaining criteria in that it was bounded on two sides and consolidated the cluster. Subsequent appeals such as 2017/A0035 however clarify that it is the cumulation of the first three criteria which defines what a cluster of development is. Therefore this is not a directly comparable case in that the appeal did not fulfil the requirements for being located at a cluster as now recognised by the Planning Appeals Commission.
- 8.23 The Agent outlined a number of other planning approvals from outside the Borough. As such this Council cannot comment on how another Planning Authority chooses to interpret or apply

policy within their own jurisdiction and cannot given considerable weight to these examples.

Habitats Regulations Assessment

8.24 The potential impact of this proposal on Special Protection Areas, Special Areas of Conservation 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 or conservation objectives of any European site.

9.0 CONCLUSION

9.1 The application site is not associated with a suitable cluster of development as described by Policy CTY2a. The proposed site would be visually and physically detached from the cluster and would fail to round off or consolidate the existing cluster of development. Additionally it has not been demonstrated that there is a specific need for a dwelling at this location in connection with an existing business. As such the proposal is contrary to Paragraphs 6.70 and 6.73 of the SPPS and Policies CTY1, 2a, and 7 of PP21.

10.0 REFUSAL REASONS

1. The proposal is contrary to Paragraph 6.73 of the Strategic Planning Policy Statement for Northern Ireland 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.
2. The proposal is contrary to Paragraph 6.73 of the Strategic Planning Policy Statement for Northern Ireland and Policy CTY2a of Planning Policy Statement 21, New Dwellings in Existing Clusters in that the cluster is not associated with a focal point and is not located at a cross-roads; the proposed site is not bounded on at least two sides with other development in the cluster and does not provide a suitable degree of enclosure.

3. The proposal is contrary to Paragraph 6.73 of the Strategic Planning Policy Statement for Northern Ireland and Policy CTY7 of Planning Policy Statement 21, Sustainable Development in the Countryside and does not merit being considered as an exceptional case in that it has not been demonstrated that there is a site specific need for the proposed dwelling that makes it essential for an employee to live at the site of their work.

Site Location Map

