

**Referred Item F**

**139 Vow Road Ballymoney BT53  
7NU**

**D/2014/0162/F  
Full Application**

**28<sup>th</sup> October 2015**

<b><u>No:</u></b>	<b>D/2014/0162/F</b>	<b><u>Ward:</u></b>	<b>The Vow</b>
<b><u>App Type:</u></b>	<b>Full Application</b>		
<b><u>Address:</u></b>	<b>139 Vow Road Ballymoney BT53 7NU</b>		
<b><u>Proposal:</u></b>	<b>Change of use from vacant public house etc. to 3no. dwellings with car parking, gardens and including amended access to planning application no. D/2014/0130/RM</b>		
<b><u>Con Area:</u></b>	<b>N/A</b>	<b><u>Valid Date:</u></b>	
<b><u>Listed Building Grade:</u></b>	<b>N/A</b>		
<b><u>Agent:</u></b>	<b>Select Design Services (NI) Ltd, 32 Garvaghy Road, Portglenone</b>		
<b><u>Applicant:</u></b>	<b>William McGaughey, 32 Garvaghy Road, Portglenone</b>		
<b><u>Objections:</u></b>	<b>0</b>	<b><u>Petitions of Objection:</u></b>	<b>0</b>
<b><u>Support:</u></b>	<b>2</b>	<b><u>Petitions of Support:</u></b>	<b>0</b>

**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 the recommendation set out in section 9 and the policies and guidance in section 7 and resolves to **Refuse** planning permission subject to the reasons set out in section 10.

## **2 SITE LOCATION & DESCRIPTION & CHARACTER OF AREA**

- 2.1 The site is located within the rural area. It is a roadside site located at the corner of Vow Road / Killens Road. The site consists of an "L" shaped plot of land incorporating The Anglers Rest bar, restaurant and function room and car park. The property has a flat at the first floor level. The site also incorporates a further small portion of land to the rear of No 137 Vow Road.

- 2.2 The Anglers Rest has been in existence as a commercial business for a considerable number of years (planning history relating to the business extends to 1983).
- 2.3 On the opposite side of Killens Road an agricultural holding exists which includes an existing turkey house (Approx 950m<sup>2</sup>). To the immediate north of the site a gap exists between the existing built form and a further two dwellings (semi-detached).

### **3 RELEVANT HISTORY**

D/2010/0013/O

Proposal: Proposed (1 pair) semi-detached dwellings on infill site with replacement parking for public house

Address: Between 137 & 139 Vow Road, Ballymoney, with access to Killens Road Approval 20.12.2011

D/2014/0130/RM

Proposed (1 No. pair) Semi-Detached Dwellings on Infill Site.

Address: Between 137 & 139 Vow Road, Ballymoney, with access to Killens Road Approval 21.10.2014

### **4 THE APPLICATION**

- 4.1 Change of use from vacant public house etc. to 3no. dwellings with car parking, gardens and including amended access to planning application no. D/2014/0130/RM.

### **5 PUBLICITY & CONSULTATIONS**

**External:**

- 5.1 **Two (2) letters of support**

**Internal:**

- 5.2 **Transport NI:** No objection subject to conditions.

**Environmental Health:** The proposal would be significantly impacted by the odour from the nearby poultry unit. Requests the submission of an odour assessment due to the proximity to the existing poultry house to the south.

**NIW:** No objection, Pre development enquiry consultation required.

## **MATERIAL CONSIDERATIONS**

- 6.1 Article 45 of the Planning Act (Northern Ireland) 2011 states that, “where an application is made for planning permission, the council or, as the case may be, the Department, in dealing with the application, must have regard to the local development plan, so far as material to the application, and to any other material considerations.”
- 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 and local policies plan are adopted, and found to be sound, 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**

PPS 3 Access, Movement and Parking

PPS21 Sustainable Development in the Countryside

PPS7 Quality Residential Environments

Guidance

DOE Air Quality Management Policy Guidance

## **8.0 CONSIDERATIONS & ASSESSMENT**

- 8.1 Part of the purpose of planning as outlined in the SPPS is to improve wellbeing. This is continued and outlined in the first Core Planning Principle of the SPPS 'Improving Health and Well-being'. Paragraph 4.11 and Paragraph 4.12 refer to Annex A of the document to be taken as a material consideration in determining applications where noise or air quality are relevant.
- 8.2 The main considerations in the determination of this application relate to: the principle of the development in this location; visual impact and residential amenity.

### **Principle of development**

- 8.3 Policy CTY 1 of PPS 21 sets out the range of types of development which, in principle, are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development.
- 8.4 Policy CTY4 of PPS 21 relates to the conversion and re-use of buildings. This policy states that permission will be granted for the sympathetic conversion of a suitable building for a variety of uses, including use as a single dwelling where this would secure its upkeep and retention providing they are of high quality design and meet a number of criteria set out below. Exceptionally consideration maybe given to the sympathetic conversion of a traditional non-residential building to provide more than one dwelling where the building is of sufficient size; the scheme of conversion involves minimal intervention; and the overall scale of the proposal and intensity of use is considered appropriate to the locality.

#### **(a) building should be of permanent construction**

- 8.5 The existing built form is of permanent construction and in fairly good order and is sufficient in size.

#### **(b) the reuse or conversion would maintain or enhance the form, character and architectural features, design and setting of the existing building and not have an adverse effect on the character or appearance of the locality.**

8.6 The proposed alterations are fairly minimal and in keeping with what would generally be considered rural design. Alterations to the fenestration reflect the proposed use. While the use of the small door canopies may be a more suburban design feature, the restrictive nature of the site limits any more substantive development to the front elevation.

**(c) any new extensions are sympathetic to the scale massing, architectural style and finishes of the existing building**

8.7 The proposed alterations are fairly minimal and the existing character is generally retained.

**(d) the reuse or conversion would not unduly affect the amenities of nearby residents or adversely affect the continued agricultural use of adjoining land or buildings**

8.8 The most recent use as a public house would have impacted on the nearest unrelated properties (Nos 135 and 137) by reason of noise and general disturbance to some extent. As such it is likely that the current proposal would have a more limited impact on existing residents taking into consideration the reduction in people / traffic movements as well as hours of use.

8.9 In relation to the proposed intensity of residential use (3 units relative to 1), the Environmental Health Department has asked for the submission of an odour assessment due to the proximity to the existing poultry house to the south. The site is 40m from a turkey unit which is in third party ownership. The predicted odour levels at the properties of 116.3(O/m) for turkeys and 22.91 (O/m<sup>3</sup>) for broilers both exceed the 3(O/m<sup>3</sup>) limit used for protection of residential amenity.

8.10 The applicant has proposed the installation of a Drimaster Positive Input Extract in the properties. Environmental Health state that this would have limited effect in addressing impacts to future users in outdoor amenity space and odour ingress through openings in the proposed dwellings.

8.11 The applicant has also stated that the prevailing wind direction would indicate that the odour nuisance would not be directed towards the residential units. However, using modelling

Environmental Health states that it still suggests that odour would remain significantly above the benchmark of 3 OM<sup>3</sup>.

- 8.12 Environmental Health have also referred to draft Guidance prepared by the CEHOG Pollution Sub – Group “ Guidance for Environmental Health on planning consultations involving agriculture and residential premises”, March 2014. This document recommends that for new dwellings near to intensive poultry agriculture it is recommended that dwellings are sited 150m away.
- 8.13 The issue of odour was overlooked during the processing of the proposed dwellings approved in the planning history outlined above in section 3. The dwellings approved are at the closest 70m from the poultry unit.
- 8.14 As mentioned above in paragraph 8.1, one of the core principles of the SPPS ‘Improving Health and Well – Being’ places onus of the planning authorities to take into consideration a wide range of environmental and amenity considerations, including air quality when managing development. It states that Planning should ensure that developments are, as far as practicable, not adversely affected by major existing or potential future, sources of air pollution. Approval of this proposal in close proximity to an odour source would be contrary to policy.
- 8.15 Policy QD 1 of Planning Policy Statement 7 ‘Quality Residential Environments’, states that Planning permission will only be granted for new residential development where it is demonstrated that the proposal will create a quality and sustainable residential environment. Furthermore, a number of criteria are set to which residential development is expected to conform to, one being criteria (h) *the design and layout will not create conflict with adjacent land uses and there is no unacceptable adverse effect on existing or proposed properties in terms of overlooking, loss of light, overshadowing, noise or other disturbance*. The approval of this proposal would create conflict with adjacent land uses, i.e. the poultry unit and would result in an unacceptable adverse impact on the proposed properties in terms of other disturbance, such as odour.
- 8.16 Furthermore, Environmental Health also cited case law **Coventry and others v Lawrence and another (2014) UKSC 13**. This highlights that if the residential units were approved,

Environmental Health would have a restriction on the instigation of statutory nuisance powers for odour emissions amounting to a statutory nuisance from the existing poultry unit. Essentially this is because the poultry unit existed at the date of the approvals in that case. The Applicant has suggested the use of an informative on any planning approval to inform future buyers. Notwithstanding that, it is the responsibility of the planning authority not to approve development that would have a significant negative effect on residential amenity. This would not negate that the principle for the development is contrary to Policy QD 1 and CTY 4.

8.17 The aforementioned case law also states that “it is wrong in principle that, through the grant of planning permission, a planning authority should be able to deprive a property owner of a right to object to what would otherwise be a nuisance, without providing them with compensation”.

8.18 Part of the CTY 4 policy test is that, approval would not unduly affect the continued agricultural use of adjoining lands or buildings. As stated previously the approval would conflict with the neighbouring land use and may affect the continued agricultural use of adjoining land in that the proposal is in such close proximity to the existing poultry house which may restrict any further expansion of the poultry business.

**(e) the nature and scale of any proposed non-residential use is appropriate to a countryside location**

8.19 Not applicable.

**(f) all necessary services are available or can be provided without significant adverse impact on the environment or character of the locality; and**

8.20 NIW require a Pre-development enquiry consultation.

**(g) access to the public road will not prejudice road safety or significantly inconvenience the flow of traffic.**

8.21 Policy AMP3 of PPS3 deals with access to public roads.



Transport NI have been consulted and offered no objection subject to conditions.

### **Other Matters**

- 8.22 Approval of this proposal could set a precedent for other similar development in the countryside in close proximity to poultry units where it is considered there is likely to be an adverse impact on the amenity of adjacent residential users. It would restrict the ability of the Council's Environmental Health Department to instigate its nuisance powers as a result of any complaints received from the occupiers of the proposed residential units.

## **9 CONCLUSION**

- 9.1 The proposed housing development is considered unacceptable in this location having regard to the Area Plan and other material considerations. The current proposal is unacceptable and would not create a quality and sustainable residential environment due to its proximity to an existing poultry unit, which would result in unacceptable nuisance to the proposed dwellings and residential amenity. Refusal is recommended.

## **10. Refusal Reasons:**

- 10.1 The proposal is contrary to Policy QD1 of Planning Policy Statement 7, Quality Residential Environments in that the development as proposed fails to provide a quality residential environment due to odour.
- 10.2 The proposal is contrary to Policy CTY 4 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that the development would if permitted adversely affect the continued agricultural use of the adjoining poultry unit.