

ANNEX I - Checklist for communications

I. Information on correspondent submitting the communication

Full name of submitting organization or person(s):

River Faughan Anglers Ltd

Permanent address:

[REDACTED]

Northern Ireland

[REDACTED]

Address for correspondence on this matter, if different from permanent address:

[REDACTED]

Belfast

Northern Ireland

[REDACTED]

Telephone: Home: [REDACTED] Mobile: [REDACTED] Fax:

E-mail: [REDACTED]

If the communication is made by a group of persons, provide the above information for each person and indicate one contact person.

If the communication is submitted by an organization, give the following information for the contact person authorized to represent the organization in connection with this communication:

Name: Dean Blackwood

Title/Position: Director
River Faughan Anglers Ltd.

II. Party concerned

Name of the State Party concerned by the communication:

The UK Member State - Planning & Local Government Group, Department of the Environment for Northern Ireland (DOE)

III. Facts of the communication

Detail the facts and circumstances of the alleged non-compliance. Include all matters of relevance to the assessment and consideration of your communication. Explain how you consider that the facts and circumstances described represent a breach of the provisions the Convention:

Please see attached complaint.

IV. Nature of alleged non-compliance

Indicate whether the communication concerns a specific case of a person's rights of access to information, public participation or access to justice being violated as a result of non-compliance or relates to a general failure to implement, or to implement correctly, (certain of) the provisions of the Convention by the Party concerned:

Our complaint relates to the infringement of a person's right to participate in environmental decision making and what we believe is a deliberate violation of the Convention by the UK Member State (Department of the Environment for Northern Ireland) by refusing to engage with third party objectors and instead directing them to seek Judicial Review through the High Court, knowing that this is likely to be prohibitively expensive.

V. Provisions of the Convention relevant for the communication

List as precisely as possible the provisions (articles, paragraphs, subparagraphs) of the Convention that the Party concerned is alleged to not comply with:

Articles 1, 3, 4, 6 and 9 – as detailed in paragraphs 16 – 22 of our attached complaint.

VI. Use of domestic remedies or other international procedures

Indicate if any domestic procedures have been invoked to address the particular matter of non-compliance which is the subject of the communication and specify which procedures were used, when which claims were made and what the results were:

If no domestic procedures have been invoked, indicate why not:

Indicate if any other international procedures have been invoked to address the issue of non-compliance which is the subject of the communication and if so, provide details (as for domestic procedures):

RFA is currently engaged in a judicial review of development consent A/2008/0408/F which will recommence in the High Court, Belfast on 17 June 2013. However, our legal challenge has been curtailed due to the concerns with mounting costs which is seriously threatening the very existence of our not for profit, cross community and voluntary organisation.

It had been our intention to challenge what we believe to be the inadequate transposition of the EIA Directive into national legislation - The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2012 and the Planning (Northern Ireland) Order 1991 (as amended) as this allows for the regularisation of unauthorised EIA Development through the granting of retrospective development consents and also allows for such developments to become immune from enforcement action, thereby circumventing the need for assessment under the EIA. However, due to the already prohibitively costly burden on our voluntary organisation, we have been unable to pursue this element of our legal challenge against DOE.

The fact that DOE actively encourages legal challenge of its decisions knowing the prohibitively costly nature of such challenges, is we believe, a deliberate and cynical exploitation of the fact that it is unlikely that many seeking to participate in environmental decision making can afford such legal redress.

VII. Confidentiality

Unless you expressly request it, none of the information contained in your communication will be kept confidential. If you are concerned that you may be penalized, harassed or persecuted, you may request that information contained in your communication, including the information on your identity, be kept confidential. If you request any information to be kept confidential, you are invited to clearly indicate which. You may also elaborate on why you wish it to be kept confidential, though this is entirely optional.

I would request that only my personal details (name, address and e-mail address) are kept confidential and that any reference to the complaint is presented on behalf of the River Faughan Anglers.

VIII. Supporting documentation (copies, not originals)

- Relevant national legislation, highlighting the most relevant provisions.
- Decisions/results of other procedures.
- Any other documentation substantiating the information provided under VII.
- Relevant pieces of correspondence with the authorities.

Avoid including extraneous or superfluous documentation and, if it is necessary to include bulky documentation, endeavour to highlight the parts which are essential to the case.

As attached as appendices 1 - 11

IX. Summary

Attach a two to three-page summary of all the relevant facts of your communication.

X. Signature

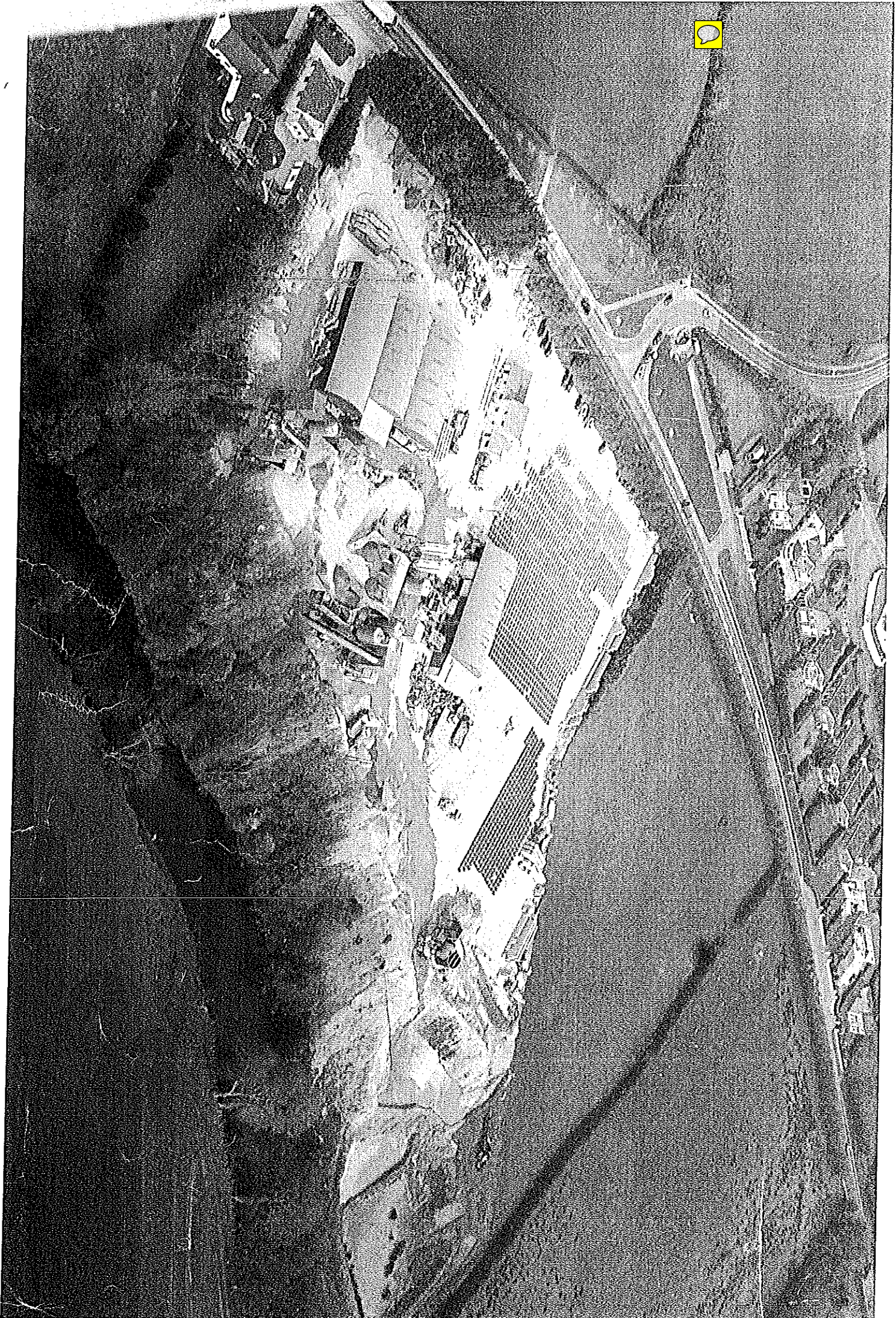
The communication should be signed and dated. If the communication is submitted by an organization, a person authorized to sign on behalf of that organization must sign it.

XI. Address

Please send the communication by email AND by registered post to the following address:

Secretary to the Aarhus Convention
United Nations Economic Commission for Europe
Environment and Human Settlement Division
Room 332, Palais des Nations
CH-1211 Geneva 10, Switzerland
Phone: +41 22 917 2384
Fax: +41 22 917 0634
E-mail: public.participation@unece.org

Clearly indicate: "Communication to the Aarhus Convention's Compliance Committee"





STATUTORY RULES OF NORTHERN IRELAND

1999 No. 73

The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999

Part IV

Procedures on Receipt of Application

Application made to the Department without prior determination as to need for environmental impact assessment or without an environmental statement

- 9.—(1) Where it appears to the Department that an application for planning permission—
- (a) is a Schedule 1 application or a Schedule 2 application;
 - (b) has not been the subject of a determination as to whether the application is or is not an EIA application; and
 - (c) is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these regulations,

it shall make a determination as to whether the application is for EIA development, taking into account the selection criteria.

(2) If the Department considers that it has not been provided with sufficient information to make a determination, it shall notify the applicant of the particular points on which it requires further information.

(3) Where an EIA application, including an application determined as such under paragraph (1), is not accompanied by an environmental statement or a statement referred to by the applicant as an environmental statement, the Department shall notify the applicant in writing that the submission of such a statement is required, giving clearly and precisely the full reasons for its view.

(4) Subject to paragraph (5), the Department shall make a determination under paragraph (1) and, where necessary, notify the applicant in accordance with paragraph (3) within 4 weeks from the date of receipt of the application or such longer period as may be agreed in writing with the applicant.

(5) Where additional information is requested under paragraph (2), the Department shall notify the applicant of its determination within a period of 4 weeks from the date of receipt of the additional information.

(6) An applicant receiving a notification pursuant to paragraph (3) shall, within 4 weeks from the date of the determination, inform the Department, in writing, that he—

- (a) accepts the Department's determination and proposes to provide an environmental statement; or
- (b) does not accept the Department's determination and proposes to seek a hearing before the Commission.

(7) If the applicant does not inform the Department in writing in accordance with paragraph (6), the permission sought shall be deemed to be refused at the end of the relevant 4 week period; and the

deemed refusal shall not give rise to an appeal to the Commission by virtue of Article 32 (appeals) or Article 33 (appeal in default of planning decision).

(8) Where the Department determines, or following a hearing by the Commission confirms, that an environmental statement is required, the statement shall be submitted within 6 months from the date of determination or such extended period as may be agreed in writing between the applicant and the Department, and if not so submitted, the application shall be deemed to be refused and the deemed refusal shall not give rise to an appeal to the Commission by virtue of Article 32 (appeals) or Article 33 (appeal in default of planning decision).

(9) Where, following a hearing by the Commission, the Department withdraws its determination that an environmental statement is required, the period within which the application for planning permission is to be determined shall be calculated from the date of notice to the applicant of the Department's withdrawal.

(10) Where the Department makes a determination under paragraph (1) that an environmental statement is required or confirms a determination under paragraph (8), regulations 7(3) and 8 shall apply.



THE PLANNING (ENVIRONMENTAL IMPACT ASSESSMENT) REGULATIONS
(Northern Ireland) 1999 (The "EIA Regulations")

EA DETERMINATION SHEET

Case Officer: Mrs K Hope Date Received: 21st May 2008

Proposal: Retrospective application for extension to site office, extension to vehicle maintenance shed, improved wash out facilities, settlement lagoons, site drainage works and associated landscape and environmental improvements.

Location: 91 Glenshane Road, Drumahoe, Londonderry

Deadline for Determination: 10th July 2008

Extension of time requested: No Date Agreed:

Does the development fall within the scope of Schedule 1 of the above Regulations: -No

Does the development fall within the scope of Schedule 2 of the above Regulations: - Yes

If 'YES' which category: - 5 (B) Mineral industry; installations for the manufacture of cement

What are the likely environmental effects of the project:-

Site drainage and settlement lagoons for the process.

Were consultations necessary to complete the environmental assessment determination? If YES please specify.

no

Are the environmental effects likely to be significant:-

THE PLANNING (ENVIRONMENTAL IMPACT ASSESSMENT) REGULATIONS
(Northern Ireland) 1999 (The "EIA Regulations")

Recommended Determination

An Environmental Statement is not required for the following reason

Specify below

All aspects of the application can be dealt with through the development control process.

Signatures

Dated

- 1.
- 2.
- 3.

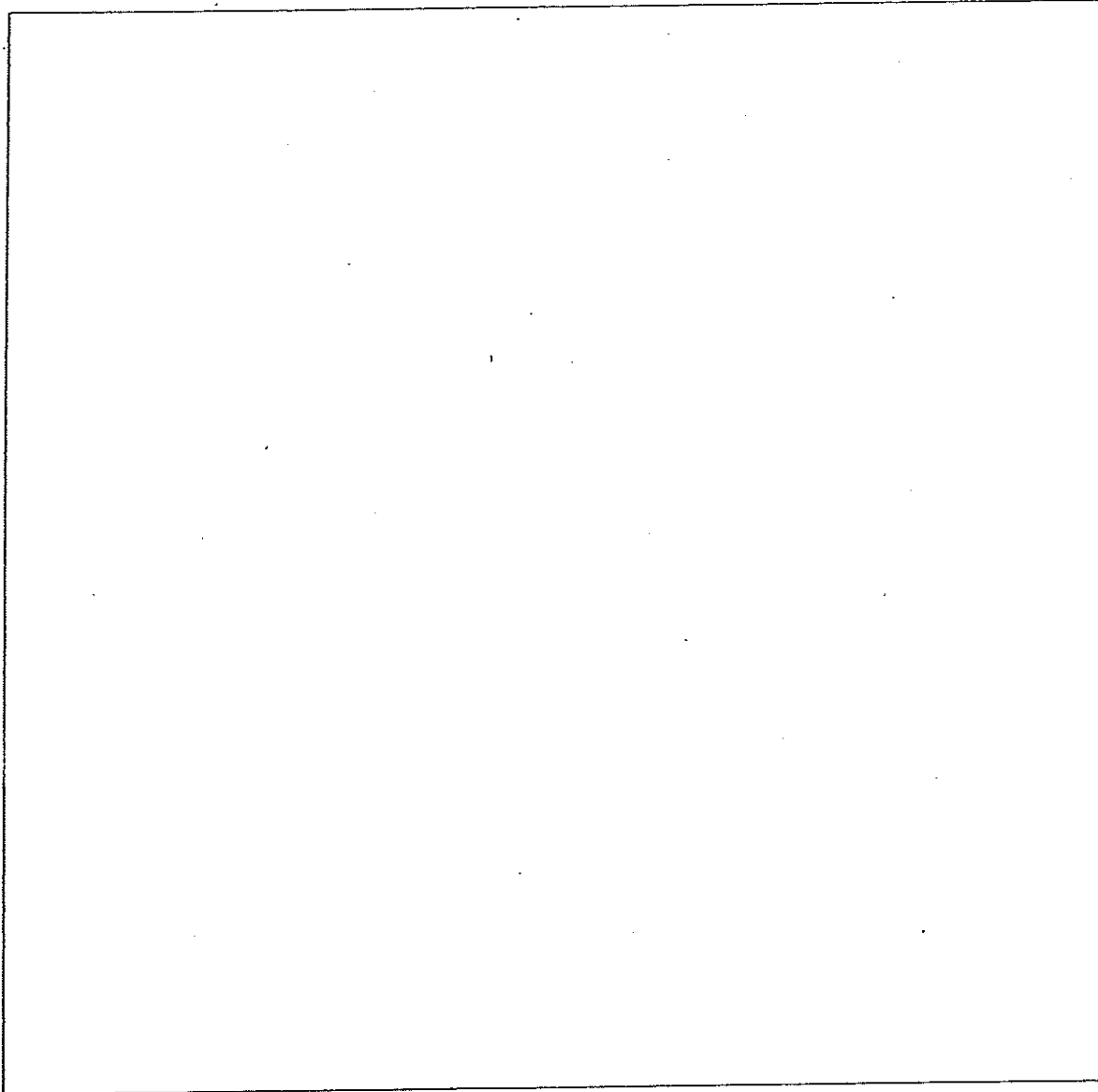
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-
-

THE PLANNING (ENVIRONMENTAL IMPACT ASSESSMENT) REGULATIONS
(Northern Ireland) 1999 (The "EIA Regulations")

REASONS WHY AN EA DETERMINATION IS NECESSARY

PROPOSAL: Retrospective application for extension to site office, extension to vehicle maintenance shed, improved wash out facilities, settlement lagoons, site drainage works and associated landscape and environmental improvements.

This form must not be detached from EA Determination Sheet



Signatures

Dated

1.
2.
3.

-
.....
.....

SELECTION CRITERIA REFERRED TO IN ARTICLE 4.3 OF THE DIRECTIVE

PROPOSAL: Retrospective application for extension to site office, extension to vehicle maintenance shed, improved wash out facilities, settlement lagoons, site drainage works and associated landscape and environmental improvements.

1. Characteristics of development.

The characteristics of development must be considered having regard, in particular, to: -

- a) the size of the development; yes
- b) the cumulation with other development;
- c) the use of natural resources;
- d) the production of waste; yes
- e) pollution and nuisances; yes
- f) the risk of accidents, having regard in particular to substances or technologies used.

2. Location of development

The environmental sensitivity of geographical areas likely to be affected by development must be considered, having regard, in particular, to: -

- a) the existing land use; yes
- b) the relative abundance, quality and regenerative capacity of natural resources in the area;
- c) the absorption capacity of the natural environment, paying particular attention to the following areas:-
 - (i) wetlands; yes
 - (ii) coastal zones;
 - (iii) mountain and forest areas;
 - (iv) nature reserves and parks;
 - (v) areas classified or protected under "Members of States" legislation; areas designated by Member States pursuant to Council Directive 79/409/EEC on the conservation of wild birds (a) and Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (b);

SELECTION CRITERIA REFERRED TO IN ARTICLE 4.3 OF THE DIRECTIVE

PROPOSAL: Retrospective application for extension to site office, extension to vehicle maintenance shed, improved wash out facilities, settlement lagoons, site drainage works and associated landscape and environmental improvements.

- (i) areas in which the environmental quality standards laid down in Community legislation have already been exceeded;
- (ii)
- (iii) densely populated areas;
- (iv) landscapes of historical, cultural or archaeological significance.
- (v)

1. Characteristics of the potential impact

The potential significant effects of development must be considered in relation to criteria set out under paragraphs 1 and 2 above, and having regard in particular to: -

- a) the extent of the impact (geographical area and size of the affected population);
- b) the transfrontier nature of the impact;
- c) the magnitude and complexity of the impact;
- a) the probability of the impact;
- b) the duration, frequency and reversibility of the impact.

Signature of Officer:

Date:

Extract from Schedule 3 of "The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 1999".



Mr M McCarron
Planning Service
Orchard House
40 Foyle Street
LONDONDERRY
BT48 6AT

Date: 23 March 2010
Telephone: 028 905 69615
Your Ref: A/10/0408
Our Ref: 17293-1

Full

RE: Retrospective application for extension to site office, extension to vehicle maintenance shed, improved wash out facilities, settlement lagoons, site drainage works and associated landscape and environmental improvements
Location: 91 Glenshane Road Drumahoe Londonderry

Dear Mr McCarron

I refer to your consultation letter for the above planning application which was received in this office on 1 March 2010.

Position

NIEA, Natural Heritage has concerns with this proposal and considers that amendments are required to the layout. In the absence of this, NIEA: Natural Heritage will recommend refusal of the application.

Appraisal of the Proposal: Natural Heritage Interest

The site is close to a designated site, River Faughan ASSI / cSAC. We note that this is a retrospective application. Procedure requires that prior to determination of planning applications that could impact upon a European site that an Article 6 Assessment is carried out. This development would have failed the Article 6 Assessment owing to the location of the drainage lagoons and their positioning within the floodplain of the River Faughan ASSI / cSAC (as pointed out by Rivers Agency in their correspondence dated 13 January 2010). The position of these lagoons raises the potential for serious water pollution to occur from the site.

NIEA has concerns regarding the existing lagoon embankments and possible risk from erosion from the adjacent River Faughan during a flood event. Such an event could potentially compromise the structural integrity of the embankment, leaving it unstable and liable to collapse, with the release of polluted water directly into the River Faughan, part of the River Faughan and Tributaries ASSI / cSAC.

NIEA also has concerns relating to the capacity of the current lagoons and the construction of the retaining embankment surrounding the lagoons. The current water level appears close to the



capacity of the lagoons and has the potential to overflow during a storm event or spill onsite. Such an event has the potential to cause overflow from the lagoons onto the adjacent river banks and pollution of the River Faughan and Tributaries ASSI / cSAC.

Recommendations

NIEA, Natural Heritage requires the following amendments to the layout:

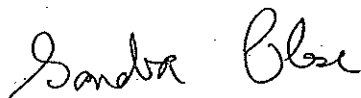
The settlement lagoons should be moved out of the floodplain away from the River Faughan. This should be done in a stepwise manner through first constructing the new settlement ponds and then directing all runoff from the site and pumping any remaining settlement water into the new ponds. Any water in the existing ponds which cannot be pumped to the new ponds should be allowed to evaporate from the old ponds prior to decommissioning of the ponds.

The existing levels appeared dangerously close to the top of the embankment and represent a serious risk of water pollution of the River Faughan and Tributaries ASSI / cSAC should a large spillage or storm event occur. The embankment surrounding the existing settlement ponds could be built up to a higher level. This will provide a greater storage capacity should a spillage or storm event occur and reduce the risk of pollution of the designated site. The existing embankment should also be planted with alder tree species of local native provenance to act as a screen in the event that the River Faughan floods. This will reduce the risk of erosion of the embankment compromising the structural integrity of the settlement lagoons leading to collapse and large scale pollution of the designated site.

A management plan for the settlement ponds should be drawn up by the applicant to contain measures to cleanse the settlement lagoons and prevent overflow should a spillage or flooding from a storm event occur (either onsite or from the adjacent River Faughan) and should cover the expected life of the lagoons. Flood and storm water management (to include defences/measures to protect the lagoon embankment from erosion) should also be included in the plan. Site drainage to include any discharges to the River Faughan (a discharge pipe out-falling on the river bank was found onsite) must also be addressed in any such management plan.

NIEA require consultation on any new plans received prior to the commencement of any of the options above. No encroachment into the River Faughan and Tributaries ASSI / cSAC should occur as a result of the works.

Yours sincerely



SANDRA CLOSE





STATUTORY RULES OF NORTHERN IRELAND

2012 No. 59

The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2012

PART 4

Procedures on Receipt of Application

Applications which appear to require determination as to need for environmental impact assessment

Applications which appear to require determination as to need for environmental impact assessment

- 10.—(1) Where it appears to the Department that an application for planning permission—
- (a) is a Schedule 1 application or a Schedule 2 application; and
 - (b) the development in question has not been the subject of a determination as to whether the application is or is not an EIA application; and
 - (c) the application is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations,

it shall make a determination as to whether the application is for EIA development, taking into account the selection criteria.

(2) If the Department considers that it has not been provided with sufficient information to make a determination under paragraph (1) it shall notify the applicant of the particular points on which it requires further information.

(3) Subject to paragraph (4), the Department shall make a determination under paragraph (1) within 4 weeks from the date of receipt of the application or such longer period as may be agreed in writing with the applicant.

(4) Where additional information is requested under paragraph (2), the Department shall notify the applicant of its determination within a period of 4 weeks from the date of receipt of the additional information.

EA DETERMINATION SHEET

Applic. No. A/2008/0408/F

Date Received 21.05.2008

Case Officer: Mr Malachey McCarron

Proposal: Retention of extension to site office, extension to vehicle maintenance shed and improved wash out facilities. Relocation of settlement lagoons, site drainage works. Associated landscape and environmental improvements (Amended description)

Location: 91 Glenshane Road, Drumahoe, Londonderry

Deadline for Determination:

Extension of time requested: Date Agreed:

Does the development fall within the scope of Schedule 1 of the above Regulations: -

Does the development fall within the scope of Schedule 2 of the above Regulations: -

Yes

If 'Yes' which category: -

5 (B) - The carrying out of development to provide for installations for the manufacture of cement

13 (A) - The carrying out of development to provide for any change to or extension of development of a description listed in Schedule 1 or in paragraph 1 to 12 of Column 1 of this table, where that development is already authorised, executed, and the change or extension may have significant adverse effects on the environment

What are the likely environmental effects of the project:- No environmental issues with the proposed siting of the lagoons, which are an improvement on the current situation.

Were consultations necessary to complete the environmental assessment determination? If YES please specify. No-as information from NIEA and Rivers Agency is already available through the ongoing process for determination of the current application.

Are the environmental effects likely to be significant:- NO

Recommended Determination

An Environmental Statement is not required for the following reasons

Specify below

Based on the current location of the lagoons, the Department had determined in June 2008 that there was no requirement for an environmental statement as all aspects of the application could be dealt with through the normal planning process. The consultation process established that NIEA had concluded, through its appropriate assessment consideration that there will not be significant adverse impact on the SAC and ASSI subject to amendment of the proposal. It was established that the current lagoons are within the flood plain and as a result had the potential to impact on the nearby River Faughan if a flood event occurred. On foot of this a revised scheme was submitted, which proposes to decommission the current lagoons and relocate them outside the flood plain and further away from the area of acknowledged importance, the River Faughan ASSI and SAC.

The Department has determined that the relocation of the lagoons can also be dealt with through the normal planning process. It is satisfied that the relocation has reduced the probability of impact and has moved the proposal away from the River Faughan ASSI and SAC and outside the flood plain. Essentially therefore the overall size of the development subject of the application is the same as in June 2008 and the location of the new lagoons is an improvement on the current location. In conclusion an EIA is not required.

Signatures

1. 
2. 
3. 

Dated

25.6.2012
25.6.12
25-6-2012

REASONS WHY AN EA DETERMINATION IS NECESSARY

PROPOSAL: Retention of extension to site office, extension to vehicle maintenance shed and improved wash out facilities. Relocation of settlement lagoons, site drainage works. Associated landscape and environmental improvements (Amended description)

This form must not be detached from EA Determination Sheet

EA determination is necessary as the revised proposal falls within the scope of Schedule 2 of the regulations-

5 (B) - The carrying out of development to provide for installations for the manufacture of cement

13 (A) - The carrying out of development to provide for any change to or extension of development of a description listed in Schedule 1 or in paragraph 1 to 12 of Column 1 of Schedule 2, where that development is already authorised, executed, and the change or extension may have significant adverse effects on the environment

Signatures

1.
2.
3.

Dated

25.6.2012
25-6-12
25-6-12

PROPOSAL: Retention of extension to site office, extension to vehicle maintenance shed and improved wash out facilities. Relocation of settlement lagoons, site drainage works. Associated landscape and environmental improvements (Amended description)

1. Characteristics of development.

The characteristics of development must be considered having regard, in particular, to: -

- | | | |
|---|--|---|
| a | the size of the development; | N |
| b | the cumulation with other development; | Y |
| c | the use of natural resources; | Y |
| d | the production of waste; | N |
| e | pollution and nuisances; | N |
| f | the risk of accidents, having regard in particular to substances or technologies used. | N |

2. Location of development

The environmental sensitivity of geographical areas likely to be affected by development must be considered, having regard, in particular, to: -

- | | | |
|----|--|-----|
| a) | the existing land use; | Y |
| b) | the relative abundance, quality and regenerative capacity of natural resources in the area; | N/A |
| c) | the absorption capacity of the natural environment, paying particular attention to the following areas:- | |
| | i.) wetlands; | N |
| | ii.) coastal zones; | N |
| | iii.) mountain and forest areas; | N |
| | iv.) nature reserves and parks; | N |

- | | |
|---|---|
| v.) areas classified or protected under EEA states' legislation; areas designated by EEA states pursuant to Council Directive 79/409/EEC on the conservation of wild birds (a) and Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (b); | N |
| vi.) areas in which the environmental quality standards laid down in Community legislation have already been exceeded; | N |
| vii.) densely populated areas; | N |
| viii.) landscapes of historical, cultural or archaeological significance. | N |

3. Characteristics of the potential impact

The potential significant effects of development must be considered in relation to criteria set out under paragraphs 1 and 2 above, and having regard in particular to: -

- | | |
|--|-----|
| a) the extent of the impact (geographical area and size of the affected population); | N |
| b) the transfrontier nature of the impact; | N/A |
| c) the magnitude and complexity of the impact; | N |
| d) the probability of the impact; | N |
| e) the duration, frequency and reversibility of the impact; | N |

Signature of Officer: 

Date: 25-6-2012



Department of
the Environment
www.doenl.gov.uk

APPROVAL OF PLANNING PERMISSION

Planning (Northern Ireland) Order 1991

Application No: **A/2008/0408/F**

Date of Application: **21st May 2008**

Site of Proposed Development: **91 Glenshan Road, Drumahoe, Londonderry**

Description of Proposal: **Retention of extension to site office, extension to vehicle maintenance shed and improved wash out facilities. Relocation of settlement lagoons, site drainage works. Associated landscape and environmental improvements**

Applicant: **W & J Chambers Ltd**
Address: **C/O GM Design Associates Ltd**
22 Lodge Road
Coleraine
BT52 1NB

Agent: **GM Design Associates Ltd**
Address: **2/242 Lodge Road**
Coleraine
BT52 1NB

Drawing Ref: **01, 02 REV 5, 03, 04, 05, 07 REV 3.**

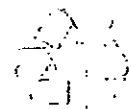
The Department of the Environment in pursuance of its powers under the above-mentioned Order hereby

GRANTS PLANNING PERMISSION

for the above-mentioned development in accordance with your application subject to compliance with the following conditions which are imposed for the reasons stated;

1. The new lagoons shall be constructed and brought into operation within 6 months of the date planning approval.

Reason: To minimise the potential for pollution incidents on the adjacent River Faughan and Tributaries SAC/ASSI.





Department of
the Environment
www.doeni.gov.uk

17. If, during the course of developing the site, the developer uncovers a watercourse not previously evident, he should advise the local Rivers Agency office immediately in order that arrangements may be made for investigation and direction in respect of any necessary measures required to deal with the watercourse.

18. The Rivers Agency has no record of flooding occurring at the site. However, visual inspection indicates that it may be subject to marginal flooding originating from the watercourse(s) which traverse/bound the site, and developers would be advised to obtain advice from competent, suitably qualified persons to assist them in determining appropriate site and finished floor levels.

19. Where a Designated watercourse flows through or adjacent to a development site, it is considered essential that a working strip of minimum width 5m is left along the bank in order to facilitate future maintenance of the watercourse by the Rivers Agency. Actual requirement should be determined in consultation with the Agency.

20. Precautions shall be taken to prevent the deposit of mud and other debris on the adjacent road by vehicles travelling to and from the construction site. Any mud, refuse, etc. deposited on the road as a result of the development, must be removed immediately by the operator/contractor.

21. Notwithstanding the terms and conditions of the Department of Environment's approval set out above, you are required under Article 71 - 83 inclusive of the Roads (NI) Order 1993 to be in possession of the DRD's consent before any work is commenced which involves making openings to any fence or hedge bounding the site. The consent is available on personal application to the Roads Service Section Engineer whose address is: 1 Crescent Road, Londonderry. A deposit will be required.

22. All construction plant and materials shall be stored within the curtilage of the site.

23. It is the responsibility of the developer to ensure that

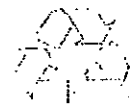
-surface water does not flow from the site onto the public road.

-the existing roadside drainage is accommodated and no water flows from the public road onto the site.

-surface water from the roof of the development hereby approved does not flow onto the public road, including the footway.

Dated: 13th September 2012

Authorised Officer 





Department of
the Environment
www.doeni.gov.uk

9. The applicant should comply with all the relevant Pollution Prevention Guidelines in order to minimise the impact of the project on the environment, paying particular attention to:

PPG 02- Above ground oil storage

PPG 05- Works in, near or liable to affect watercourses

PPG 06- Working at demolition and construction sites

PPG-Any oil tanks serving the development should be banded.

These PPG's can be accessed by visiting the NetRegs website at:

<http://www.netregs.gov.uk/netregs/links/107968.aspx>

Hard copies are available from NIEA, WMU upon request.

10. The fabric of the lagoons should be designed, constructed and maintained such that river users such as anglers or canoeists etc will not be at risk from sudden water level rise due to failure or overtopping of the structures. This matter should be considered by the applicant and their agents during the Health and safety CDM process.

11. Rivers Agency recommends that a minimum freeboard of 600mm or Q100 Climate Change level +300mm (whichever is greater) should be added to all development levels including the roads and paths for design purposes.

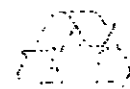
12. The applicant's attention is drawn to section 7.1 of PPS 15 the responsibility for justifying the FRA and accepting any flood risk rests with the developer and his/her professional advisers.

13. Under the terms of Schedule 6 of the Drainage (Northern Ireland) Order 1973 the applicant must submit to Rivers Agency, for its consent any proposal to carry out works which might affect a watercourse.

14. Developers should acquaint themselves of their statutory obligations in respect of watercourses as prescribed in the Drainage (Northern Ireland) Order 1973, and consult the Rivers Agency of the Department of Agriculture accordingly on any related matters.

15. Any proposals in connection with the development, either temporary or permanent which involve interference with any watercourse at the site:- such as diversion, culverting, bridging; or placing any form of structure in any watercourse, require the written consent of the Rivers Agency. Failure to obtain such consent prior to carrying out such proposals is an offence under the Drainage Order which may lead to prosecution or statutory action as provided for.

16. Any proposals in connection with the development, either temporary or permanent which involve additional discharge of storm water to any watercourse require the written consent of the Rivers Agency. Failure to obtain such consent prior to permitting such discharge is an offence under the Drainage Order which may lead to prosecution or statutory action as provided for.





Department of
the Environment
www.doem.gov.uk

Informatives

1. This determination relates to planning control only and does not cover any consent or approval which may be necessary to authorise the development under other prevailing legislation as may be administered by the Department or other statutory authority.
2. The applicant's attention is drawn to the fact that the site is close to the boundary of River Faughan SAC/ASSI and precautions should be taken to ensure its integrity will not be damaged by construction vehicles, deposited materials, contaminated run-off, or any other activity during the construction period or thereafter. Any works occurring within the designated site but outside the red line planning application boundary are subject to The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended) and Environment (Northern Ireland) Order 2002 (as amended) and require consent from the Northern Ireland Environment Agency; Conservation, Designations and Protection Unit, Klondyke Building, Gasworks Business Park, Belfast BT7 2JA.
3. The applicant is informed that it is an offence under Part II, Article 7 of 'The Water (Northern Ireland) Order (1999)' to knowingly or otherwise discharge or deposit any poisonous, noxious or polluting matter so that it enters a waterway or water contained in any underground strata. The penalty if found guilty of an offence under this Article is imprisonment for a term not exceeding 2 years or to a fine or to both.
4. This permission does not alter or extinguish or otherwise effect any existing or valid right of way crossing, impinging or otherwise pertaining to these lands.
5. This permission does not confer title. It is the responsibility of the developer to ensure that he controls all the lands necessary to carry out the proposed development.
6. It is an offence under the Water (Northern Ireland) Order 1999 to discharge or deposit, whether knowingly or otherwise, any poisonous, noxious or polluting matter so that it enters a waterway or water in any underground strata. The applicant should ensure that measures are in place to prevent pollution of surface or ground water as a result of the activities on site, both during construction and thereafter.
7. In order to decrease the risk of incorrect diversion of 'foul' sewage to drains carrying rain/surface water each building shall be provided with such sanitary pipework, foul drainage and rain water drainage as may be necessary for the hygienic and adequate disposal of foul water and rain water separately from that building. The drainage system should also be designed to minimize the risk of wrongly connecting the 'foul' sewage system to the rain water drainage system, once the buildings are occupied.
8. The buildings associated with this planning application should not be occupied unless the necessary sewerage infrastructure is in place to transfer foul sewage to a Northern Ireland Water sewer in an acceptable manner or a private wastewater treatment facility consented by NIEA. It should be noted that NIEA does not favour existing sewerage infrastructure being utilised in such a way as to act as a temporary 'cesspit'





Department of
the Environment
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2. The existing lagoons shall be decommissioned and removed from the site by the 31st October 2013 and all works associated with this operation shall be confined to the period between 1 June and 31 October. The decommissioning and removal of the existing spoil shall be effected from the Glenshane Road side of the development towards the River Faughan and no heavy plant works or spoil storage shall take place within 10m of the banks of the River Faughan.

Reason: To prevent potential sediment loading of the adjacent River Faughan and Tributaries SAC/ASSI, which may impact on the fish cycle particularly at the most sensitive times of the year.

3. The approved development shall be carried out in accordance with the stamped approved drawings 01, 03, 04 received on the 1st May 2008, 05 received on the 21st May 2008 and 02 Rev 5 and 07 Rev 3 received on the 30th September 2011. The phasing of the works hereby approved shall be carried out as detailed in drawing 07 Rev 3.

Reason: To prevent pollution of the adjacent River Faughan and Tributaries SAC/ASSI.

4. Sediment extracted from the interior of the existing settlement lagoons shall not be used in the proposed re-grading works and shall be removed offsite and disposed of to a suitably licensed waste disposal site no later than 31st October 2013

Reason: To prevent long term contamination of the adjacent River Faughan and Tributaries SAC/ASSI.

5. Only native rough grass species shall be planted onto the approved lagoon banks, which shall be seeded in the first growing season following construction of the lagoon banks.

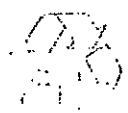
Reason: To prevent the pollution of the adjacent River Faughan, part of the River Faughan and Tributaries SAC/ASSI

6. The gradient of the access shall not exceed 4% (1 in 25) over the first 10m outside the road boundary. Where the vehicular access crosses a footway, the access gradient shall be between 4% (1 in 25) maximum and 2.5% (1 in 40) minimum and shall be formed so that there is no abrupt change of slope along the footway.

Reason: To ensure there is a satisfactory means of access in the interests of road safety and the convenience of road user.

7. During the first available planting after the construction of the development hereby approved the proposed landscaping of the site shall be carried in accordance with stamped approved drawing number 02 Rev 5.

Reason: In the interests of visual amenity.





River Faughan Anglers Ltd

26A Carlisle Road

L'Derry BT48 6 JW

25 July 2012

Mr Malachy McCarron

Divisional Planning Manager

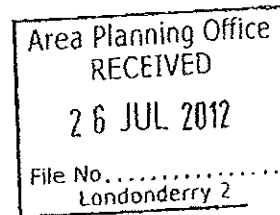
Planning Service

Orchard House

40 Foyle Street

Derry

BT48 9LT



Dear Mr McCarron

Planning Application A/2008/0408/F

I refer to your e-mail dated 17 July 2012 and the recent EIA determination undertaken on 25 June 2012 in an attempt to rectify the previous fundamental errors made by Planning Service when it assessed the environmental effects of this development. Despite the fact that Planning Service has refused to respond to River Faughan Angler's letters pointing out these fundamental errors, the fact that Planning Service has now had to carry out a further assessment is a clear admission that it has previously failed to properly adhere to the requirements of its own EIA Regulations. It is also a clear vindication of RFA's position.

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It is now evident that serious mismanagement of this case since Planning Service first refused planning permission in 1984 has now seriously compromised the department's role of protecting the environment as it displays an unwillingness to take appropriate action to protect the River Faughan SAC. It is clearly reluctant to comply with European environmental law as this will expose the full extent of its historic neglect and maladministration. Unfortunately, in its deliberate attempt to avoid seeking an Environmental Statement it has made further fundamental errors in its assessment.

It is also evident that Planning Service is determined to approve this application without properly assessing its environmental effects. Nowhere is this more evident than in the Minister's recent response to Raymond McCartney MLA's question AQW 12898/11-15 where he states that the unauthorised settlement lagoons adjacent to the River Faughan SAC, which NIEA confirm would fail an Habitats Regulations Assessment, when combined with the extensive development including significant land filling which has actually slipped into the SAC and caused a pollution incident, with the "*distinct probability*" of further incidents "*does not fall under the description of Environmental Impact Assessment (EIA) development as defined in the EIA Regulations.*"

It is quite incredible that the department would believe that such an extensive development, comprising so many elements, which in themselves represent acknowledged serious risks to the SAC, does not constitute EIA development. Obviously, such a statement would rely on an EIA determination having been carried out, however to demonstrate just how far off the mark Planning Service is in its understanding of the EA and Habitats Directives, some of the more obvious errors in your approach to assessing the environmental effects of this development are set out below.

It does not inspire confidence in Planning Service that after accepting it has made a mess of the environmental assessment and recognised the need to undertake a second EIA determination, that once again fundamental errors have been made which demonstrate a worrying inability to get a grasp of its environmental obligations as required by the European Directives. RFA is in no doubt that the way in which this new EIA Determination has been undertaken has left the department wide open to challenge should it now move to approve this proposal.



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By way of a demonstrating the more glaringly obvious examples of where you have again misapplied your own regulations, firstly, it is noted that in response to the question "what are the likely environmental effects of the project" you have answered "*no environmental issues with the proposed filling of the lagoons which are an improvement on the current situation.*" Apart from failing to specify any likely effects, of which there are many, this statement clearly attempts to offset the significant effects of the "*current situation*" against the perceived, but not assessed, beneficial effects of the proposal.

This position is reiterated in the "Recommended Determination" section of the EIA determination so there can be no doubt that the department is relying on the position that the amended proposal will offset the actual significant adverse effects of the current development, first recorded by NIEA in March 2010. Contrary to the Planning Service's ill-informed position, environmental law, established specifically in relation to EIA screening through the UK courts and applicable to NI is very clear on this point:

"There is no principle in the legislation that justifies significant adverse effects being ignored or treated as nullified in some way on the grounds that they are outweighed by the environmental benefits of the project."

Planning Service was obviously unaware, or prepared to ignore this long established principle in case law when it made a negative determination solely on this basis.

Incredibly you have failed to take account of the fact that there is the potential for significant environmental effects associated with the decommissioning and removal of the existing lagoons, which are located on the floodplain, one of which, according to NIEA contains waste which is "*highly contaminated*". Furthermore, in its evidence to the Planning Appeals Commission, Planning Service sought to rely on the fact that periodically the applicant would remove the (presumably contaminated) waste from the lagoons and deposited it on the outside of the lagoon walls within the floodplain.

RFA has photographic evidence that would suggest that this was taking place as recently as Spring 2012. The unknown environmental effects of build-up and dumping of controlled waste on a floodplain over a long period of time, and required repatriation of "*highly contaminated*" waste from the floodplain

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so close to the River Faughan SAC to a licensed waste disposal site represents a serious risk to that habitat and the environment generally.

This being the case one would have thought that the production and disposal of "*highly contaminated*" waste and the risk of pollution would have been a major consideration in any EIA assessment. In fact so important are these factors, that the EIA determination specifically requires them to be considered as part of any assessment process. However, under the section entitled "Characteristics of Development", items:

"d) production of waste"

"e) pollution and nuisance"

"f) the risk of accidents having regard in particular to substances or technologies used"

you have specifically answered NO in each instance, categorically confirming that you did not have particular regard to these matters.

Without having regard to these "particular" requirements as confirmed by your categorical NO, you cannot possibly have properly assessed the environmental effects and cannot, therefore, approve this development without being in breach of the EA and Habitats Directives.

Equally concerning is that you have failed to recognise that new settlement lagoons will be receptacles for contaminated waste. Furthermore, so preoccupied is Planning Service with the settlement lagoons, you have failed to recognise that this is only one element of this application and potential impacts from the other elements including the "wash out facilities", "extension to the vehicle maintenance shed" and "site drainage works" have been completely missed or ignored.



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Your assessment of the cumulative effects, which for the purpose of EIA assessment are defined as "*past, present and predicible future impacts*", is non-existent and the EIA determination fails to take account issues such as:

- Pollution incident as a result of a recent landslip directly into the River Faughan SAC from the landfill embankment which forms part of this wider operation;
- the acknowledged risk of future occurrences of landslip from this site by NIEA;
- The concerns of site contamination from heavy metals and other chemical pollutants from this site highlighted in the Environmental Statement accompanying the A6 Road proposal,
- The effects from unauthorised development / landfill granted by the Certificate of Lawful Development due to Planning Service's failure to enforce without ever having assessed those environmental effects,
- The remainder of the development and the processes operating therein,
- The decommissioning and removal of the existing "highly contaminated" lagoons, and
- The current proposal,

While the EIA determination claims to have considered the "cumulation with other development" there is simply no evidence or attempt to demonstrate how these and other likely effects have all been assessed cumulatively.

The Planning (EIA) Regulations (NI) 2012 makes provision that "*the Department, where it issues a negative screening decision, shall make available the reasons for that decision on request.*" As this is not contained or explained in the EIA determination yet must have been done before the determination could be made:-

Please can you now provide RFA with a copy of the detailed reasoning which supports how the department reached this negative screening decision?

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Under the heading "Location of Development" and the requirement to have regard to "the absorption capacity of the natural environment", nothing could better demonstrate the department's complete lack of understanding of EIA than its answer to item c, point v). When asked if you had particular regard to "areas classified as protected under EEA states legislation, you have answered NO! This can only be interpreted that you do not accept that the Habitats Directive and the designation of an SAC falls under this description.

Please can you confirm why you consider that the Habitats Directive and internationally important designation of SAC does not fall within this description?

It is noted that Planning Service deliberately choose not to consult with other competent authorities before making a negative EIA determination, instead relying on previous information from NIEA and Rivers Agency. It is noted that another competent authority, the Loughs Agency, which is the body responsible for the protection of inland fisheries, has been specifically excluded from this EIA determination.

The EIA determination specifically states that the reason why no consultation with competent authorities was necessary is because "*information from NIEA and Rivers Agency is already available through the ongoing process for the determination of the current application.*" Again this displays a serious lack of understanding of the EIA screening process which is specifically to determine if there are likely to be significant effects, if the proposal is EIA development and whether an ES is required. The information held on file from NIEA and Rivers Agency is part of the planning application consultation process and at no stage does it appear that either competent authority was asked for their opinion on whether there would there be significant environmental effects that would warrant an ES, which is the purpose of an EIA determination. However, they are now being used to support the view that there are no significant effects from this development, without having been asked that question.



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As their respective comments would have been made in the knowledge that Planning Service had unilaterally made a negative determination back in 2008 without consulting with them, then this information does not constitute a request on whether the "*development is likely to have significant effects on the environment*" as is required as part of the EIA screening process. NIEA has confirmed in writing to RFA that it was never consulted on whether an ES was necessary when the application was submitted in 2008.

This was subsequently shown up to be a fundamental error by Planning Service as is demonstrated by the fact that it has had to undertake the unusual step of having to make a second EIA screening after previously advising RFA that neither the original proposal, nor the amendment fell within the description of development that would require an ES.

Despite the Minister's avoidance of answering the actual question posed in AQW12844/15-15, it is now clear from your subsequent actions that Planning Service was wrong on both counts. Firstly, in March 2010 NIEA advised that the original proposal would fail a Habitats Regulations Assessment because of the significant and adverse effects on the ASSI and SAC.

Given these significant adverse effects it is inconceivable that an ES would not have been required as is abundantly clear from the European Commission's publication "Assessment of plans and projects significantly affecting Natura 2000 sites", which specifically states that "*MN2000 makes clear that where a project is likely to have significant effects on a Natura 2000 site it is also likely that both an Article 6 assessment and an EIA will be necessary*".

You already know from NIEA's and Rivers Agency's responses that there are significant environmental effects from the existing lagoons, and as this represents "*present*" significant effects directly associated with this application, you are required to consider these cumulatively, as per the definition of cumulative effects, yet there is no evidence to show that these featured in any assessment. The fact that they did not renders this latest attempt at an EIA determination defective.

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Also, as already pointed out, environmental law has already established that it is not acceptable or lawful to make a negative EIA determination on the basis that significant effects will be offset by the department's perceived benefits of the project.

Secondly, it is now evident that Planning Service failed to carry out a revised EIA determination on the amended proposal, yet was able to state that an ES was not required for that amendment. Obviously this was another major blunder which it has now attempted to rectify by undertaking this latest, and as this letter clearly exposes, fundamentally flawed EIA determination of 25 June 2012.

It is clear from the EIA determination and confirmed by you e-mail dated 24th July 2012 that the environmental information which informed your negative determination seeks to rely on NIEA's Habitats Regulations Assessment. However, your department's own policy PPS2 makes very clear that *"the environmental assessment required under the Habitats Regulations does not correspond to an environmental assessment as required by the Planning (Assessment of Environmental Effects) Regulations 1989"* (now the corresponding EIA Regs.), yet this is exactly what you have done.

Therefore any attempt to justify the latest negative EIA determination on the HRA is very questionable. It is alarming that in its desperate attempts to avoid exposure of its many failings on this case, Planning Service not only displays a complete ignorance of the EA and Habitats Directives, but also of its own planning policy!

It is also noted that the HRAs used to inform Planning Service's EIA determination all pre-date the landslip which caused a pollution incident in November 2011 and presents a "distinct probability" of future incidents. This being the case this actual damage and continuing risk appears never to have never been assessed as part of the HRA process. Therefore, not only is it highly questionable that you have relied on an HRA to make a negative EIA determination, contrary to your own PPS2, but the environmental assessment you have relied in that HRA is incomplete.

Please can you confirm that at no time in the processing of this application, were NIEA, Rivers Agency or Loughs Agency asked by Planning Service to comment specifically in relation to whether the development was likely to have significant environmental effects as part of a formal EIA screening process?



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Please can you confirm if the department still considers the EIA determination dated 25 June 2012 to be compliant with the Planning (EIA) Regulations 2012 and if intends to rely on this determination?

It is of serious concern that the department charged with protecting our environment displays such an obvious lack of understanding and inability to apply the requirements of the European Directives. Given the serious errors and neglect displayed by the department over this environmentally damaging development so close to the River Faughan SAC and a source of drinking water for the population of Derry, RFA would wish to record that it has no confidence in the department's ability or willingness to address the significant environmental threat posed by this development.

RFA must caution the department that if it attempts to proceed on the basis of the EIA determination carried out on 25 June 2012, it will be deliberately doing so in the knowledge that it is acting illegally and in direct breach of the EA and Habitats Directives.

Please can you respond to the reasonable questions in bold by return.

Yours sincerely

Gerry Quinn

Secretary



Copy to Ulster Anglers Federation
Fish Legal

Tel. (028) 71 267781

1801



Date: 2nd August 2012

Your Ref:

Our Ref: A/2008/0408/F

(Please quote at all times)



Department of
the Environment
www.doeni.gov.uk

Northern Area Planning Office
Orchard House
40 Foyle Street
Derry
BT48 6AT
Telephone:

River Faughan Anglers Ltd
26A Carlisle Road
Londonderry
BT48 6JW

For the attention of Gerry Quinn

Dear Mr Quinn

PLANNING APPLICATION A/2008/0408/F

I refer to your letter of 25th July 2012 address to Mr Malachy McCarron.

Please note that in the interest of efficient processing and tracking of correspondence, all mail should be address to the Area Planning Office and all e-mails to divisional.planning.office.londonderry@nics.gov.uk.

The Department notes the content of your letter in which you disagree with the decisions made on Environmental Impact Assessment determination(s) (EIA) in respect of A/2008/0408/F.

The Department has complied with the requirements of the legislation and has made and documented its decisions and reasoning. It is considered that this is both correct and justified. I note the River Faughan Anglers take a different view and you are entitled to challenge the Department's decision by way of Judicial Review. In the interim there is nothing further that can be added as there would appear to be fundamentally different views taken on EIA. The Department does not consider it appropriate to engage in extended and expansive correspondence in the light of your stance as there is an appropriate route for remedy through Judicial Review.

With respect to the Habitats Directive, the Department has correctly addressed its obligations under Article 6 and these have been made available to you. Contrary to your assertion NIEA have looked into the land slip in November 2011, which occurred from land outside the current planning application, and confirmed that there was no evidence of pollution.

Yours sincerely

Helena O'Toole
Area Planning Manager



Northern Ireland
Assembly

Ref No	Member	Question	Tabled	Answered
AQW 12859/11-15	Mr R McCartney (SF - Foyle)	<p>To ask the Minister of the Environment what consideration was given to the environmental effects on the River Faughan from the development at 91 Glenshane Road, Derry, before his Department granted a Certificate of Lawful Development, A/2007/1061/LDE.</p> <p>Written answer:</p> <p>The statutory process providing for a Certificate Of Lawful Use or Development is set out at Article 83A of the Planning (Northern Ireland) Order 1991. This specifies precisely when a use or operation is lawful (83 A(2)). As a result of this the Department is directed solely to the question of whether the activity constitutes development and enforcement action can still be taken within statutory timeframes, or whether an Enforcement Notice is in place which the use or development contravenes. Once this information is obtained and considered for compliance, the Department must issue the Certificate. There is no provision in Article 83A to require that the environmental effects of the development inform the issuing of the Certificate of Lawful Development.</p>	13/06/2012	Answered



Finding

Park House
87/91 Great Victoria Street
BELFAST
BT2 7AG
T: 028 9024 4710
F: 028 9031 2536
E: info@pacni.gov.uk

Appeal Reference:	2011/E018
Appeal by:	W & J Chambers Ltd against an Enforcement Notice dated 13 May 2011.
Alleged Breach of Planning Control	The alleged unauthorised use of the said lands as lagoons, making a material change in the use of said lands.
Location:	Land at Lismacrol, Londonderry
Application Reference:	EN/A/2006/0043CA/2
Procedure:	Informal Hearing on 23 February 2012
Decision by:	Commissioner Pauline Boomer, dated 2 April 2012.

Finding

1. The enforcement notice is a nullity and there is no valid appeal.

Reasons

2. Article 68A (1) (a) of The Planning (Northern Ireland) Order 1991 states that "an enforcement notice shall state the matters which appear to the Department to constitute the breach of planning control". Article 68A(2) states that a notice complies with paragraph (1)(a) if it enables a recipient to know what these matters are.
3. Part 3 of the Notice identifies the breach of planning control as "the alleged unauthorised use of the said lands as lagoons, making a material change in the use of said lands". It is good practice for such a notice to identify the original use and the alleged unauthorised use. The Department acknowledged that the notice should have referred to a change of use "from agricultural land" but remained of the opinion that construction of lagoons constituted a material change to the use of that land.
4. The three lagoons to which the enforcement notice refers are physical structures, the product of an engineering operation rather than a use of land in their own right. Site inspections suggest that the lagoons are to facilitate an extension to the appellants' concrete products business.
5. The allegation in the Enforcement Notice is unclear as it does not enable the appellants to know what the material change of use is which appears to the Department to constitute a breach of planning control. This defect in the notice is not capable of being corrected without injustice to the appellant. The notice is therefore fundamentally flawed and a nullity.

COMMISSIONER PAULINE BOOMER

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Enforcement Appeal Decision

Park House
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Appeal Reference: 2011/E017
Appeal by: W & J Chambers Ltd against an Enforcement Notice dated
13 May 2011
Alleged Breach of Planning Control: Unauthorised lagoons
Location: Lismacarol, Londonderry
Application Reference: EN/A/2006/0043/CA /1
Procedure: Informal Hearing on 23 February 2012
Decision by: Commissioner Pauline Boomer, dated 7 June 2012

Grounds of Appeal

1. The appeal was brought on Grounds (a), (d), (f) and (g) as set out in Article 69 (3) of the Planning (Northern Ireland) Order 1991. There is a deemed planning application by virtue of Article 71 (5) of the Order.

Legal Ground (d)

2. Where there has been a breach of planning control consisting of operational development without planning permission, Article 67B (3) of the Planning (Northern Ireland) Order states that no enforcement action may be taken after the end of a period of 4 years from when the development was substantially completed. As the enforcement notice was issued by the Department on 13 May 2011, the appellant must therefore establish that the development was substantially completed before 13 May 2007.
3. The Department acknowledged that Photograph 3, taken in 23 May 2007, submitted in Appendix 4 of their Statement of Case, showed that the three lagoons now in situ had been constructed by that date. They also accepted that Photograph 4, taken 10 March 2011, and submitted in Appendix 5, confirms the retention of these lagoons over that period. However it is the Department's contention that whilst the position and shape of these three lagoons has remained unchanged, they were never substantially completed on 23 May 2007 as constant work has been carried out on them in the intervening period.
4. Whilst the Department has argued that they have continually been "remodelled" with materials being dredged from the lagoons and piled onto their banks, the appellant indicates that the works carried out involved the periodic clearing out of silt from the bottom of each lagoon with some of this material piled up on the levees to reinforce the banks. The Department based this assumption on the

lack of grass cover evident on the banks in their Photographs 4 and 5 taken in March 2011. They were however unable to provide any topographical details or specific measurements to clarify what alterations had been carried out to the embankments in terms of scale or height between May 2007 and May 2011. The aerial photographs and other photographs taken from above the lagoons provided by both parties offered little assistance on this matter. However, the appellant provided photographs taken 16 February 2012 which duplicated the views presented by the Department in May 2007 and the only discernible difference is the extent of grass on the banks in the latter photograph.

5. I accept the appellant's explanation that these works were essential for the maintenance of the three lagoons to prevent silting of these structures which operate on a cyclical system, thus creating variations in levels of water, quality and colour of water between the three lagoons. I note that the NIEA representative confirmed that the desilting of the lagoons is critical to ensure that water runs from Lagoon One through to Lagoon Two and then to Lagoon Three. Whilst some of this material is used for other aspects of the concrete making process, the reinforcement of the banks or levees is also essential to support these structures which can be subject to erosion and other forms of slippage. I have no evidence to support the Department's contention that the scale and height of the banks has been significantly altered between May 2007 and May 2011 and am satisfied that any works seeking to desilt the lagoons and reinforce their banks was required for essential maintenance rather than "remodelling".
6. I am persuaded that these lagoons were subsequently completed before 13 May 2007. The development is therefore immune from enforcement action.
7. The appeal on Legal Ground (d) succeeds and I do not therefore need to consider the other grounds of appeal.

Decision

- (i) The appeal on Ground (d) succeeds.
- (ii) The Enforcement Notice is quashed.

COMMISSIONER PAULINE BOOMER



Northern Ireland
Assembly

Ref No	Member	Question	Tabled	Answered
AQW 20076/11-15	Mr A Easton (DUP - North Down)	<p>To ask the Minister of the Environment how many legal challenges have been taken against planning decisions over the last three years.</p> <p>Written answer:</p> <p>Legal challenges to planning decisions made by the Department can be made through the courts by way of Judicial Reviews (JRs) and the Department has been party to cases over the years.</p> <p>The Department does not hold a complete central record of all legal challenges on planning decisions made over the last three years. However, based on information currently available, approximately 25 Judicial Reviews were taken against planning decisions between April 2010 to date; half of which remain ongoing.</p> <p>I have instructed officials to collate an accurate up-to-date database for all JRs taken on planning decisions over the last 3 years.</p>	19/02/2013	Answered



Development Control Officer's Professional Planning Report

Case Officer Mr Malachy McCarron		Application ID: A/2008/0408/F Application Type: Full	
Applicant Name and Address:	W & J Chambers Ltd C/O GM Design Associates Ltd 22 Lodge Road Coleraine BT52 1NB	Agent Name and Address:	GM Design Associates Ltd 2/242 Lodge Road Coleraine BT52 1NB

Location: 91 Glenshane Road, Drumahoe, Londonderry

Development Type: Building Extension/Alteration

Proposal: Retrospective application for extension of site office extension to vehicle maintenance shed, improved wash out facilities, settlement lagoons, site drainage works and associated landscape and environmental improvements

Date Valid: 12.06.2008

Statutory Expiry Date:

Date of last Neighbour Notifications: 5th September 2008

Date of District Council Consultation: 11/3/11

Date of A31 Determination & Decision:
EIA Determination:

Date First Advertised: 17th June 2008

Date Last Advertised: 18th June 2008

Consultees

Roads - Londonderry Office-Mr Liam Canny, ,1 Crescent Road, ,Londonderry, ,Co. Londonderry,

,

Env Health Derry City Council-Mr Philip O'Doherty, ,Council Offices, ,98 Strand Road, ,Derry, ,Co. Londonderry, ,BT48 7NN,

~~Foyle Carlingford & Irish Lights Commission-Mr Declan Lawlor,,Loughs Agency, ,Headquarters, ,22 Victoria Road, ,Londonderry,,BT47 2AB,~~

,

Water Management Unit-17 Antrim Road,,Lisburn,,Co. Antrim,,BT28 3AL,

Natural Heritage-Ms Suzi McGany, ,Klondyke Buildings, ,Gasworks Business Park, ,Lower Ormeau Road, ,Belfast, ,Co. Antrim, ,BT7 2JA,

Industrial Pollution & Radio Chemical Inspectorate-Mr Jeremy Doherty,,Klondyke Buildings, ,Gasworks Business Park, ,Lower Ormeau Road, ,Belfast, ,Co. Antrim, ,BT7 2JA,

DARDNI - Coleraine-Mr Mervyn Johnston,,DARD,,Crown Building,,Artillery Road, ,Coleraine, ,Co. Londonderry,

Rivers Agency Craigavon-Mr Alan Bell, Seagoe Industrial Estate, Seagoe, Craigavon, Co. Armagh, BT63 5QE,

Rivers Agency-Mr Alan Reddick,Planning Advisory Unit,Rivers Agency,44 Seagoe Industrial Estate,Craigavon,BT63 4 QE,,

Notified Neighbours

The Owner/Occupier, River Faughan Anglers Ltd,26A Carlisle Road,Londonderry,BT48 6JW

Representations

1 letters of objection have been received in regards to this application.

Consultation replies text

INFRA - Roads - Londonderry Office

UTL -

ENVHEA - Env Health Derry City Council

HCAL - Foyle Carlingford & Irish Lights Commission

MISC -

NIEA - Water Management Unit

NIEA - Natural Heritage

NIEA - Industrial Pollution & Radio Chemical Inspectorate

DARDNI - DARDNI - Coleraine

FLOOD - Rivers Agency Craigavon

RIVAG - Rivers Agency

Consultee replies

Roads - Londonderry Office, Mr Liam Canny,
1 Crescent Road,
Londonderry,
Co. Londonderry,
Consultation reply dated 24th November 2008,
Consultation reply dated 17th November 2008,

''
Consultation reply dated ,

Env Health Derry City Council, Mr Philip O'Doherty,
Council Offices,
98 Strand Road,
Derry,
Co. Londonderry,
BT48 7NN,
Consultation reply dated 15th July 2009,

Foyle Carlingford & Irish Lights Commission, Mr Declan Lawlor,
Loughs Agency,
Headquarters,

22 Victoria Road,
Londonderry.
BT47 2AB,
Consultation reply dated ,

''
Consultation reply dated .

Water Management Unit, 17 Antrim Road,
Lisburn.
Co. Antrim
BT28 3AJ

Consultation reply dated 11th February 2011,

Natural Heritage, Ms Suzi McGarry,
Klondyke Buildings,
Gasworks Business Park,
Lower Ormeau Road,
Belfast,
Co. Antrim,
BT7 2JA,

Consultation reply dated 16th February 2011,

Industrial Pollution & Radio Chemical Inspectorate, Mr Jeremy Doherty,
Klondyke Buildings,
Gasworks Business Park,
Lower Ormeau Road,
Belfast,
Co. Antrim,
BT7 2JA,
Consultation reply dated ,

DARDNI - Coleraine, Mr Mervyn Johnston,
DARD,
Crown Building,
Artillery Road,
Coleraine,
Co. Londonderry,
Consultation reply dated ,

Rivers Agency Craigavon, Mr Alan Bell, Seagoe Industrial Estate, Seagoe, Craigavon, Co.
Armagh, BT63 5QE,
Consultation reply dated 11th October 2010,

Rivers Agency, Mr Alan Reddick
Planning Advisory Unit
Rivers Agency
44 Seagoe Industrial Estate
Craigavon
BT63 4 QE

Consultation reply dated 4th February 2011.
Consultation reply dated 24th January 2011,

Site History TYPE	PROPOSAL	LOCATION	Determination	Date
A/2001/0165/O	Site for residential development including associated road improvements.	Lands between Glenshane Road and Fincairn Road, Drumahoe, Londonderry (majority of housing site zoning H25 to north and west of the Beeches.		19.12.2008

Drumahoe).

A/2007/1061/L DE	Premises of concrete products & sand & gravel merchants. Including offices, weighbridge, canteen, drying shed, vehicle maintenance shed, bagging plant, concrete plant, storage (pipes, bagged sand, gravel bins), parking area, hardstandings for circulation & laying out of blocks and washing facilities	Lands to the south of 91 Glenshane Road, Drumahoe	05.03.2008
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A/2001/0932/F	Residential Development of 33 No units comprising 29 No detached dwellings, 2 No apartments and 2 No townhouses	Lands to the west of No 86 Glenshane Road Drumahoe and opposite 87 and 89 Glenshane Road Drumahoe and east of 14, 16 and 18 The Beeches Drumahoe, Londonderry	23.03.2009
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Constraint Policy Reference	Policy Description	Hazard/Constraint
AMC/A/002	Faughan Valley, Derry District	Minerals Constraint
HSV/A/002	Faughan Valley Area of High Scenic	High Scenic Value

DB/A/001 Londonderry District Council District Boundary
Bounda

ASC/011 Area of Special Control (Urban ASC
Containment)

APB/A/002 Londonderry Area Plan Area Plan Boundary
Boundary

GB/005 Londonderry Greenbelt Greenbelt

FLOOD_LD_100YR Londonderry
_IOH

A6 Road Themes

FLOOD_LD_CON_I Londonderry
OH

F Foyle Parliamentary Constituencies

Case Officer Site Visit Report

Date of Site Visit:

SITE VISIT DETAILS/DESCRIPTIONS

1 - Characteristics of Site

This is a large site, which is part of an even larger concrete batching plant. The site lies to the south of the main plant. The site begins with the exit onto the Glenshane Road and continues ~~to the south-south-west until it reaches the banks of River Faughan. The site contains a~~ number of built developments including an office building, a vehicle maintenance shed, washing out tank area and 3 no lagoons.

2 - Characteristics of Area

The site lies outside the development limits of Derry. The site now lies within an area considered countryside as described in Planning Policy Statement 21: Sustainable Development in the Countryside. The site is within an Area of High Scenic Value and an Area of Constraint on Mineral Development in accordance with Derry Area Plan 2011.

3 - Description of Proposal

Retrospective application for extension to site office, extension to vehicle maintenance shed, improved wash out facilities, settlement lagoons, site drainage works and associated landscape and environmental improvements.

ASSESSMENT OF POLICY AND OTHER MATERIAL CONSIDERATIONS

This proposal will be assessed against a hierarchy of planning policy and supplementary guidance, these are outlined below-

Planning Policy Statement 1: General Principles
Planning Policy Statement 2: Planning and Nature Conservation
Planning Policy Statement 3: Access, Movement and Parking
Planning Policy Statement 4: Planning and Economic Development
Planning Policy Statement 15: Planning and Flood Risk
Planning Policy Statement 21: Sustainable Development in the Countryside

Parking Standards

Derry Area Plan 2011

Consultations

DRD Roads Service: No objection subject to standard conditions and informatives
NIEA Industrial Pollution and Radio Chemical Inspectorate: No comments to make.
DCC EHD: No objections
NI Water: No objections
NIEA Water Management Unit: No objections

Rivers Agency: Indicated that part of the site lies within the flood plain.
NIEA Natural Heritage: Recommend refusal on the basis potential damage to ASSI through flooding from site.

History

A/1980/0813-FILLING OF LAND TO PROVIDE EXTENSION TO EXISTING BRICKWORKS-Approval

A/1983/0516-CONTINUED USE OF AGRICULTURAL LAND FOR EXTENSIONS TO BRICKWORKS-Approval

A/1984/0451-CHANGE OF USE OF PART OF AGRICULTURAL FIELD TO YARD FOR STOCKING CONCRETE PRODUCTS-Refusal-Appeal dismissed

A/2007/1061/LDE-'Premises of concrete products & sand & gravel merchants. Including offices, weighbridge, canteen, drying shed, vehicle maintenance shed, bagging plant, concrete plant, storage (pipes, bagged sand, gravel bins), parking area, hardstandings for circulation & laying out of blocks and washing facilities'

The Department issued a certificate of lawful development for the above existing use. No enforcement could be taken on the above operations as the time period for enforcement action had elapsed.

Objection

River Faughan Anglers Ltd- RFA have made representations to the application and placed on record their strong objection to the application. In summary their objections are as follows:

- Planning Service have failed to act against breaches of planning control
- Extension of development contravenes current planning policies
- Proposal would set a precedent
- Stricter planning policy is now in place than in 1984 when a appeal was dismissed at the site
- Application involves illegal landfill
- 'Environmental Improvements' are meaningless as the fall outside the site
- Planting will have impact on flood plain and ASSI
- Application lacks sufficient detail to determine its suitability in terms of IND 4
- Application will have adverse impact on salmon pool
- Impact on drinking water, protected fish stocks and other endangered wildlife
- Lagoons are a danger to children
- Worries that this development will become lawful.

Consideration

This application was submitted on foot of the determination of the certificate of lawful development when the Department identified areas to the south west of main plant, which were not exempt from enforcement action. As such the applicant submitted an application to regularise this portion of the land.

In determining this application the Department must have regard to all material considerations, including the merits of the proposal, site history, planning policy, all representations made to the application and all consultations responses.

There is a history of planning applications on this site pertaining to extension or proposed extension of the concrete plant. There was 2 approvals in the early 1980s for expansion of the plant. In 1984 the Department sustained a refusal for further expansion at appeal. The refusal on based on residential amenity and impact on the area of high scenic value. Between 1984 and 2006 the business expanded without the benefit of planning permission. A application for a certificate of lawful development for existing development was submitted in 2007 seeking to regularise changes to the site, which the applicant claimed were now exempt. The Department agreed that part of the development was exempt from enforcement action and therefore lawful. However it was highlighted at the time that there were further changes and operations to the south west of the site, which were not exempt. As a result the current application was submitted.

Since the date of the submission of the application the planning policy has changed and therefore the Department must take account of any new material considerations. In March 2006 the introduction of dPPS 14 removed the designation of 'green belt' which the site previously had. Therefore since this application's submission in 2008 the site has been considered as 'countryside' in accordance with dPPS 14 until November 2008, with dPPS21 until June 2010 and at present with PPS21. Policy CTY 1 'Development in the Countryside' of PPS 21 states that there are a range of types of development which in principle would acceptable in the 'countryside'. These include some non residential developments including 'industry and business use in accordance with PPS 4.

PPS 4 was under review until the final version was issued in November 2010. The relevant policy within the document is PED 3 which deals with the expansion of established industrial use in the countryside. This proposal fails the first the test of the policy in that given the scale and nature of the proposal would, if permitted, harm the rural character and appearance of the local area and there will also be a major increase in the site area of the enterprise. The proposal has expanded into what was previously non-industrial green field land and will have an adverse impact of the amenity of this countryside area. The proposal does meet the exceptional circumstances identified in PED 3.

Policy ENV 1 of DAP 2011 states that proposals which would adversely affect or change either the quality or character of the landscape within the Areas of High Scenic Value (AoHSV) will not normally be permitted. It has not been demonstrated that this expansion will not have an adverse impact on the local character and no exceptional reasons have been presented to the Department to allow a departure from this policy.

Planning Policy Statement 15 deals with Planning and Flood Risk. Rivers Agency identified that part of the site is within the flood plain. The Department brought this to the attention of the applicant and in accordance with policy FLD 1 he was given as opportunity to demonstrate whether or not he met any of the exceptional cases where development would be allowed in the floodplain. In response to this the agent did not demonstrate an exceptional case, however he presented a case that the site did not lie within the flood plain; that the Strategic Flood Map did not give a sufficient level of accuracy and further evidence was submitted to demonstrate that lagoons fell outside the flood plain. Flood Risk Assessments were submitted on 2 occasions and both occasions Rivers Agency confirmed that the lagoons were in the flood plain. As such the proposal fails to meet policy FLD 1 of PPS 15.

Planning Service reconsulted NIEA Natural Heritage, Water Management Unit and Loughs Agency on foot of the lagoons falling within the flood plain, as the Department wanted to assess if there would be any residual risk to the Faughan in the event of a flood incident. WMU asked for remedial works to be carried out on site and Planning Service acknowledged this letter dated 26th March 2010. Loughs Agency did not raise any further issues.

NIEA Natural Heritage had concerns that there would be the potential for the lagoons to overflow during a storm event or spill on site . Such an event has the potential to cause overflow from the lagoons onto the adjacent river banks and pollution of the River Faughan and Tributaries. They stated that unless the lagoons are moved out of the flood plain and away from the River Faughan, they would recommend refusal.

In summary Planning Service must weigh all the material considerations; planning policy, the ~~previous history, the proposed use, the objection and consultee advice against this~~ development.

Taking all of these factors into account the planning judgement is that, on balance, refusal should be recommended in that the proposal is contrary to PPS 2, 4, 15 and the DAP 2011.

Case Officer Recommendation – Refusal

Brief Summary of reasons for recommendation

Refusal Reasons

1. Contrary to Planning Policy Statement 15 : Planning and Flood Risk
2. Contrary to Planning Policy Statement 2: Planning and Nature Conservation
3. The proposal is contrary to Planning Policy Statement 4: Planning and Economic Development

DC Officer's Signature:

M. M. Cannon

Date:

18-2-11

DC Group Recommendation

~~Agree with case officer recommendation~~
Refuse. Contrary to PPS 2
PPS 4
PPS 15

D.C. Group Signatures:

[Signature]
[Signature]
M. M. Cannon

Date:

18-7-11

- Application had previously been presented to Council on the 18th February 2011 with a recommendation to refuse on the following grounds- the proposal was contrary to PPS 2, PPS 4 and PPS 15.
- The application was deferred for an office meeting and at the office meeting the applicant was advised of the reasons for refusal in more detail. (Please see office meeting minutes on file dated 16th March 2011). In summary, the existing lagoons were located within the flood plain and were not an exception under PPS 15. If a flood event occurred, the existing lagoons could have potentially had an impact on the adjacent River Faughan, and as result the Department deemed the proposal contrary to PPS 2. The proposal was also an extension of an existing business in the Countryside and the applicant had not demonstrated that the proposal met the requirements of PED 3 of PPS4.
- The applicant responded to the concerns of the Department by proposing that the existing lagoons be re-located to an area within the existing site and red line. The proposed relocation would be outside the flood plain as identified by Rivers Agency. The revised site plan was submitted for consideration on the 15th April 2011. Rivers Agency and NIEA were re-consulted and the third party objector was notified of the revised plan.
- A planning statement addressing the Department's concerns with PPS 4 was also submitted on the 15th April 2011. The Department has considered issues raised within the document. The vast majority of the operation was dealt with under the CLUD and therefore is certified as lawful development. The Department accepts that the remaining aspects of the development are modest, when considered in the context of the entire operation. The extensions to the existing buildings are minor in nature and therefore are acceptable. It would be unreasonable to expect the entire operation to relocate to a new location in order to accommodate business related expansion. The lagoons are an important element in the running of the business and were originally constructed on the recommendation of NIEA in order to prevent run off into the River Faughan. As such the expansion was a site specific response to improve the overall site operation. The statement has demonstrated that Chambers makes a significant contribution to the local economy, through continuous employment over a 50 year period. The expansion will involve the construction of 3 lagoons and an area of hard standing. Whilst this is indeed encroaching into the countryside, I believe that on balance, it will improve the existing business by stopping the potential for run off into the River Faughan and it would unreasonable to expect this longstanding business to relocate when this rather minor expansion is for the improvement of running of the business both from an environmental and economic perspective.
- Rivers Agency confirmed on the 16th May 2011 that the revised location of the lagoons was repositioned outside the flood plain. They requested that the flood risk assessment carried out for the site be updated to reflect the revised location.
- NIEA confirmed on the 8th July that they had no objections to the revised location subject to conditions.
- Given the response of the Rivers Agency and NIEA, the Department asked the applicant to formally confirm that they wished to revise the application. The applicant submitted a revised P1 on the 22nd July 2011 with a revised description; *'Retention of extension to site office, extension to vehicle maintenance shed and improved wash out facilities. Relocation of settlement lagoons, site drainage works. Associated landscape and environmental improvements (Amended description)'*.

- Rivers Agency requested revised plans in August 2011 demonstrating that the floodplain be restored to its original level.
- NIEA confirmed on the 30th September 2011 that they had no objections to revised description and plans.
- Rivers Agency confirmed on the 20th October 2011 that they had no objections to revised description and plans.
- The Department requested that NIEA clarified the conditions that they proposed in their September consultation.
- From the date of the last recommendation to refuse to Council, the Department has received 3 further letters of objection from River Faughan Anglers. There were 4 objections prior to February 2011.
- The Department has considered the contents of the letters. The letters raise issues in relation to how the Department and NIEA have processed this application and the previous planning history on the site. The Department has responded to these issues on a number of occasions and they are documented on the file.
- The letters have opposed both the existing lagoons and the proposed relocated lagoons. Whilst the Department was content there were valid planning reasons for recommending refusal of the existing lagoons, the same recommendation could not be arrived at for the relocated lagoons. As documented above the relocated lagoons will not be impacted upon by flooding and their new location has moved them further away from the River Faughan ASSI/SAC. The 3rd party letters do not provide any evidence which would persuade me that the relocated lagoons, if approved, would have a negative impact on the River Faughan. I am satisfied that NIEA and Rivers Agency have given this sufficient consideration and have provided adequate mitigation measures to ensure the existing lagoons are decommissioned and the new lagoons are constructed correctly.

Deferred Application – Consideration

See attached note on file
Application and objections discussed fully
and committee responses taken into consideration
Group recommends Approval of amended proposal

- | | |
|---|--------|
| 1. Any new material factor(s) raised? | YES/NO |
| 2. Any different weight attached to planning judgement? | YES/NO |
| 3. Changed opinion? | YES/NO |

D.C. Group Signatures:

C. M. C. M. C.
M. Gornley
M. M. Comor

Date:

24-8-2012

Deferred Application – Reconsideration

- | | |
|---|--------|
| 1. Any new material factor(s) raised? | YES/NO |
| 2. Any different weight attached to planning judgement? | YES/NO |
| 3. Changed opinion? | YES/NO |

D.C. Group Signatures:

Date:

STATUTORY INSTRUMENTS

1991 No. 1220

The Planning (Northern Ireland) Order 1991

PART VI ENFORCEMENT

[^{F1}Certificate of lawful use or development

[^{F1}Certificate of lawfulness of existing use or development

83A.—(1) If any person wishes to ascertain whether—

- (a) any existing use of buildings or other land is lawful;
- (b) any operations which have been carried out in, on, over or under land are lawful; or
- (c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

he may make an application for the purpose to the Department specifying the land and describing the use, operations or other matter.

(2) For the purposes of this Order uses and operations are lawful at any time if—

- (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
- (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

(3) For the purposes of this Order any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if—

- (a) the time for taking enforcement action in respect of the failure has then expired; and
- (b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

(4) If, on an application under this Article, the Department is provided with information satisfying it of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the Department or a description substituted by it, the Department shall issue a certificate to that effect; and in any other case it shall refuse the application.

(5) A certificate under this Article shall—

- (a) specify the land to which it relates;
- (b) describe the use, operations or other matter in question (in the case of any use falling within one of the classes specified in an order under Article 11(2)(e), identifying it by reference to that class);
- (c) give the reasons for determining the use, operations or other matter to be lawful; and
- (d) specify the date of the application for the certificate.

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Planning (Northern Ireland) Order 1991. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details)

(6) The lawfulness of any use, operations or other matter for which a certificate is in force under this Article shall be conclusively presumed.

(7) A certificate under this Article in respect of any use shall also have effect, for the purposes of the following statutory provisions, as if it were a grant of planning permission—

- (a) section 3(3) of the Caravans Act (Northern Ireland) 1963 (c. 17);
- (b) Article 7(2) of the Pollution Control and Local Government (Northern Ireland) Order 1978 (NI 19); and
- (c) Article 8(3) of the Waste and Contaminated Land (Northern Ireland) Order 1997 (NI 19).]

Annotations:

F1 2003 NI 8