Development Control Officer's Professional Planning Report

Case Officer		Application ID: A/2008/0408/F	
Mr Malachy McCarron		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:	1/3/11
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 Carmy, ,1 Crescent Road, ,Londonderry, ,Co. Londonderry,

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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,

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

Natural Heritage-Ms Suzi McGarry, ,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 3AL,

Consultation reply dated 11th February 2011,

Natural Heritage, Ms Suzi McCarry,
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/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	Lands to the south of 91 Glenshane Road, Drumahoe	05.03.2008
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

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 Bounda	District Boundary
ASC/011	Area of Special Control (Urban Containment)	ASC
APB/A/002	Londonderry Area Plan Boundary	Area Plan Boundary
GB/005	Londonderry Greenbelt	Greenbelt
FLOOD_LD_100YR_IOH	Londonderry	
A6		Road Themes
FLOOD_LD_CON_IOH	Londonderry	
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 bank's 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 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 Managment 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- REA 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 suitably 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 imnpact 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 were 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

- 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 perpsective.
- 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: [illegible]
N. Gorley
M. McCormon

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: _____

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Date: _____