
Appeal Reference:	2021/A0214
Appeal by:	Mullan Plant Sales
Appeal against:	The refusal of full planning permission
Proposed Development:	Extension to existing storage yard to provide improved storage (retrospective)
Location:	Lands immediately south/southwest of 3 Magheramore Road, Garvagh
Planning Authority:	Causeway Coast and Glens Borough Council
Application Reference:	LA01/2020/0445/F
Procedure:	Written Representations with Commissioner's site visit on 17 th June 2024
Decision by:	Commissioner Diane O'Neill, dated 28 th June 2024

Decision

1. The appeal is dismissed.

Reasons

2. The main issues in this appeal are:
 - the principle of development
 - the impact on the rural character of the area
 - whether it would be prejudicial to road safety
 - whether it would result in flood risk
 - whether it would adversely impact on priority habitat
3. Section 45 (1) of the Planning Act (NI) 2011 requires the Commission, in dealing with an appeal, to have regard to the local development plan, so far as material to the application, and to any other material considerations. The Northern Area Plan 2016 (NAP) operates as the local development plan for the area where the appeal site is located. The site is outside any settlement development limit within NAP and is in the countryside. The NAP has no material policies for dealing with the appeal development.
4. The Strategic Planning Policy Statement for Northern Ireland (SPPS) sets out the transitional arrangements that will operate until a local authority has adopted a Plan Strategy for the whole of the council area. The SPPS retains certain existing planning policy statements and amongst these is PPS 21 which provides the relevant policy context for the appeal development.
5. Policy CTY 1 of PPS 21 sets out a range of types of development which in principle are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development. A number of instances when planning

permission will be granted for non-residential development are outlined. As the appeal development is for an industry and business use PPS 4 Planning and Economic Development is applicable. As the proposal does not exceed any of the thresholds in the Planning (Environmental Impact Assessment) Regulations (NI) 2017, an Environmental Impact Assessment is not required in this case.

6. On 26th February 2020 the planning authority issued a Certificate Of Lawfulness of Existing Use or Development (CLEUD) for the retention of an existing commercial yard used for storage and maintenance/repair of lorries, trailers and other large agricultural and plant machinery/equipment; the retention of existing shed/workshop, stores and ramps, hardstanding, vehicular access and street lighting for maintenance repair of vehicles/plant and equipment to the north-west of the appeal site (LA01/2019/1359/LDE). The appeal relates to the extension of this area without the benefit of planning permission. It does not involve the construction of any buildings. Numerous concerns were raised by objectors in relation to the merit of the CLEUD (LA01/2019/1359/LDE) however the planning authority is satisfied that the matters are lawful and it has not been revoked. No CLUED has been issued in relation to the appeal site to certify that the extension of the yard is lawful. Calls were made for changes to be made to the certification process however this is beyond the remit of this appeal. On 21st March 2019 outline planning permission was granted for a replacement dwelling and detached garage within the certified existing yard area however this has lapsed (LA01/2018/1145/O).
7. Policy PED 1 of PPS 4 relates to economic development in settlements and is not relevant to the assessment of the appeal development which is located within the countryside.
8. Policy PED 3 of PPS 4 relates to the expansion of an established economic development use in the countryside. It states that the expansion of an established economic development use in the countryside will be permitted where the scale and nature of the proposal does not harm the rural character or appearance of the local area and there is no major increase in the site area of the enterprise. It is added that a proposal for the major expansion of an existing industrial enterprise that would not meet the policy provisions will only be permitted in exceptional circumstances where it is demonstrated that: relocation of the enterprise is not possible for particular operational or employment reasons; the proposal would make a significant contribution to the local economy; and the development would not undermine the rural character. In all cases, measures to aid the integration into the landscape will be required for both the extension and the existing site.
9. The site area of the existing established yard is approximately 0.3ha with the appeal site area being approximately 0.2ha. At present views of the appeal site are limited along the Magheramore Road due to the existing roadside vegetation and raised bank. The appellant intends to provide visibility splays of 2.4m x 36m to the west of the site entrance and 2.4m x 40m to the east of the site entrance. Even though this is considerably below the visibility splays requirement sought by the planning authority of 2.4m x 70m in both directions, it would still require the removal of a considerable portion of the existing vegetation and bank thus significantly increasing views of the site. The proposed new roadside hedgerow, on top of a new embankment, would take a considerable amount of time to mature before it would provide adequate screening. The storage of products in relation to

the appellant's plant machinery business would be very apparent on the site. The considerable expansion of the existing development along a prominent roadside location would be harmful to the rural character and appearance of the local area. Whilst it is argued that the appellant provides a considerable amount of employment in the area and supports local communities and charities, as the proposed use is for storage and there is to be no intended increase in the number of personnel employed by the business, the contribution of the development to the local economy is limited. No substantive evidence was presented in relation to the particular operational or employment reasons for the development. The development is therefore contrary to Policy PED 3.

10. Policy PED 9 within PPS 4 provides the general criteria for economic development that a proposal for economic development use will be required to meet in addition to the other policy provisions within PPS 4. The planning authority and objectors raised objection in relation to criteria (a), (c), (d), (g), (j), (k) and (m) of Policy PED 9.
11. Criterion (a) of Policy PED 9 requires that the proposal is compatible with surrounding land uses. Although there is an existing commercial yard adjacent to the appeal site, the surrounding land uses are predominantly detached residential properties set within agricultural land. The storage of plant machinery is not compatible with these predominant surrounding land uses. Criterion (a) is therefore not met.
12. Criterion (c) of Policy PED 9 requires that it does not adversely affect features of the natural or built heritage. Paragraph 6.192 of the SPPS and Policy NH 5 of PPS 2 Natural Heritage, which are the basis for the seventh reason for refusal, also states that planning permission should only be granted for a development proposal which is not likely to result in the unacceptable adverse impact on, or damage to known priority habitats. A development proposal which is likely to result in an unacceptable adverse impact on, or damage to it may only be permitted where the benefits of the proposed development outweigh its value. In such cases, appropriate mitigation and/ or compensatory measures will be required. The provision of even what the appellant considers to be adequate visibility splays of 2.4m x 40m to the east and 2.4m x 36m to the west of the site entrance would require the removal of a substantial proportion of the existing hedgerow and bank. As all hedgerows in NI are a priority habitat, this extensive removal would have an adverse impact on this priority habitat. I am not persuaded that this will not be the case. No persuasive benefits of the development were identified by the appellant. The proposed new planting would take a considerable amount of time to mature before it could compensate for the loss. Criterion (c) is therefore not met. The seventh reason for refusal and the objectors' concerns in relation to this matter are sustained.
13. Criterion (d) of Policy PED 9 requires that it is not located in an area at flood risk and will not cause or exacerbate flooding. Policy FLD 3 of PPS 15 Planning and Flood Risk, which is the basis of the sixth reason for refusal, and Paragraph 6.114 of the SPPS, state that a Drainage Assessment is required where a change of use involves hardstanding exceeding 1000 square metres in area. Despite being a change of use from agricultural land to hardstanding, no such information was submitted by the appellant. It is therefore not known whether the development would cause or exacerbate flooding. Criterion (d) is therefore not met. The sixth

reason for refusal and the objectors concerns in relation to this matter are sustained.

14. Criterion (g) of Policy PED 9 requires that the existing road network can safely handle any extra vehicular traffic the development will generate, or suitable developer led improvements are proposed to overcome any road problems identified. Criterion (h) of Policy PED 9 requires that adequate access arrangements, parking and manoeuvring areas are provided. Policy AMP 2 of PPS 3 Access, Movement and Parking, which is the basis for the amended third reason for refusal as well as the fourth and fifth reasons for refusal, states that planning permission will only be granted for a development proposal involving direct access, or the intensification of the use of an existing access, onto a public road where such access will not prejudice road safety or significantly inconvenience the flow of traffic.
15. The Magheramore Road is a narrow unclassified rural road that is used not only by local residents and farmers but also by traffic to gain access to the main A29 Carhill Road. Despite claims that the appellant annually trims the roadside hedgerows and has carried out road improvements, the existing access to the appeal development is located on a corner section of the road and is substandard. Whilst it is now claimed by the appellant that there would be no increase in the number of vehicles visiting the site, the appeal development is approximately two-thirds the size of the existing yard thus considerably increasing its storage capacity. Given the nature of the appellant's business, slow moving, large vehicles would be availing of the access.
16. Development Control Advice Note (DCAN) 15 Vehicular Access Standards sets out the standards to be used for assessing improvements to existing accesses. Given the speed of the traffic on the priority road and the type of access, I concur with the planning authority and DfI Roads that the visibility splay requirement is 2.4m x 70m in both directions with a corresponding forward sight distance of 70m. Road widening at the access and a passing bay would also be required further along the Magheramore Road in the direction of the A29 Carhill Road, where the appellant's business is located and from where the large vehicles would be travelling from. The appellant is however only proposing visibility splays of 2.4m x 36m to the west and 2.4m x 40m to the east with a proposed forward sight distance of 48m with no road widening or passing bay. Although this is a slight improvement to what exists at present, it is significantly less than what is required. Given the nature of the development, it would not be appropriate to use the bracketed figure of 2.4m x 45m, even if this could be achieved, as I am not persuaded that danger to road users would not be likely to be caused and there are no exceptional circumstances in this case. Extensive evidence, including photographic evidence, was also presented by those living in close proximity to the appeal site that large vehicles trying to negotiate the existing access block the road due to its restricted width. The potential danger of the access is exacerbated by the inadequate forward visibility on this corner section of the road. Numerous instances were identified by residents of domestic vehicles having to pull into driveways in order to enable the large vehicles visiting the appeal site to pass. The appeal development would therefore prejudice road safety and inconvenience road users. Criteria (g) and (h) of Policy PED 9 are therefore not met. The third reason for refusal as amended, as well as the fourth and fifth reasons for refusal and the objectors concerns in relation to these matters are sustained.

17. Criterion (j) of Policy PED 9 requires that the site layout, building design, associated infrastructure and landscaping arrangements are of high quality and assist the promotion of sustainability and biodiversity. The removal of a substantial amount of hedgerow and bank would not serve to promote, but rather would harm, biodiversity. The introduction of new landscaping would take a significant amount of time to mature before it could compensate for the loss. Criterion (j) is not met.
18. Criterion (k) of Policy PED 9 states that appropriate boundary treatment and means of enclosure are provided and any areas of outside storage proposed are adequately screened from public view. The development relates to the open storage of plant machinery. Whilst it is currently screened from public view due to the presence of the embankment and mature hedgerow, the proposed removal of a significant portion of the hedgerow will considerably increase the public view of the site and any plant equipment being stored there. The new planting proposed will take a considerable amount of time before it could adequately screen the site from public view. Criterion (k) is not met.
19. Criterion (m) of Policy PED 9 states that, in the case of proposals in the countryside, there are satisfactory measures to assist integration into the landscape. The considerable extension of the commercial storage yard would be along a roadside stretch of the Magheramore Road. The roadside presence of the appeal development would be substantially greater than the existing yard. The proposed removal of a substantial section of the bank and hedgerow, even for the inadequate visibility splays proposed by the appellant, would open views of the commercial site when travelling along this section of the road in either direction. This would be the case for a considerable amount of time until the proposed new vegetation matures and in the interim it would not mitigate the adverse impact of the development. The proposal would fail to integrate into the rural landscape and criterion (m) is not met.
20. As the appeal development is contrary to Policies PED 3 and PED 9 of PPS 4, the second reason for refusal and the objectors concerns in relation to this matter are sustained.
21. As the proposal fails to meet PPS 4, it is not one of the specified types of development considered to be acceptable in the countryside under Policy CTY 1 of PPS 21. Accordingly, the first reason for refusal and the objectors concerns in relation to this matter are sustained.
22. Concern was raised in relation to noise and nuisance arising from the development. As the appeal development is only for storage, I am not persuaded that there would be an adverse impact in relation to these matters. In terms of deterring crime and promoting personal and personnel safety, the site would be enclosed by vegetation and security gates. There are also a number of residential properties in close proximity to the site the inhabitants of which could provide informal surveillance. These matters are therefore not determining.
23. As the reasons for refusal and the objectors concerns only in relation to these matters are all sustained, the appeal fails.

This decision is based on the following drawings:-

Drawing 01 Rev 2 1:2500 Location map date stamped received by the planning authority on 25th February 2021

Drawing 02 Rev 1 1:250 Proposed site entrance arrangement date stamped received by the planning authority on 25th February 2021

Drawing 03 Rev 3 1:250 Existing Block Plan date stamped received by the planning authority on 25th February 2021

Drawing 04 1:500 Existing site survey date stamped received by the planning authority on 25th February 2021

Drawing 06 Map illustrating the existing approved commercial yard and area of extension in red date stamped received by the planning authority on 25th February 2021

COMMISSIONER DIANE O'NEILL

List of Documents

Planning Authority (Causeway Coast and Glens Borough Council):-	Statement of Case (PA 1) Rebuttal (PA 2)
Appellant (CMI Planners-agent):-	Statement of Case (A 1)
Third parties Objectors:-	
Ms Heather Long (No.8B Magheramore Road)	Statement of Case (OB 1)
Mr Matthew Johnson (No.7 Magheramore Road)	Statement of Case (OB 2) Rebuttal (OB 10)
Ms Sharon Johnston (No.7 Magheramore Road)	Statement of Case (OB 3) Rebuttal (OB 8)
Mr Francis Johnston (No.7 Magheramore Road)	Statement of Case (OB 4) Rebuttal (OB 9)
Mr T Johnston (20 St Columba's Park, Garvagh)	Statement of Case (OB 5)
Mr T Long (No.8B Magheramore Road)	Statement of Case (OB 6)
Ms Carmel Johnston (20 St Columba's Park, Garvagh)	Statement of Case (OB 7)
Supporters (CMI Planners):-	Statement of Case from 53 individuals (S 1-53)