

Appeal Decision

Appeal Reference:	2023/A0063.
Appeal by:	J W Garage Services.
Appeal against:	The refusal of full planning permission.
Proposed Development:	Erection of replacement workshop and associated external works.
Location:	221 Keady Road, Armagh, BT60 3EW.
Planning Authority:	Armagh City, Banbridge & Craigavon Borough Council.
Application Reference:	LA08/2020/1496/F.
Procedure:	Written representation with Accompanied Site Visit on 25 th June 2024.
Decision by:	Commissioner Kieran O'Connell, dated 29 th July 2024.

Decision

1. The appeal is allowed.

Reasons

2. The main issue in this appeal is whether the appeal development would adversely affect features of natural heritage.
3. Section 45(1) of the Planning Act (NI) 2011 (the Act) requires the Commission, in dealing with an appeal, to have regard to the local development plan (LDP) so far as material to the application, and to any other material considerations. Section 6(4) of the Act states that where regard is to be had to the LDP, the determination must be made in accordance with the plan unless material considerations indicate otherwise.
4. The Armagh Area Plan 2004 (AAP), as amended by AAP Alteration 1: Countryside Proposals, operates as the relevant LDP for the area the appeal site is in. Within it, the site is located in the countryside. However, as the countryside policies within the plan are now outdated, having been overtaken by a succession of regional policies for development in the countryside, no determining weight can be attached to them.
5. The SPPS sets out transitional arrangements that will operate until a Plan Strategy for the Council area is adopted. In this Council area, no Plan Strategy has been adopted. Accordingly, during the transitional period, the SPPS retains certain Planning Policy Statements (PPSs). Any conflict between the SPPS and any policy retained under the transitional arrangements, must be resolved in favour of

the provisions of the SPPS. As no conflict arises between the policy provisions of the SPPS and the relevant retained policy in Planning Policy Statement 4: Economic Development (PPS 4), the latter provides the relevant policy context for assessing the appeal proposal.

6. The appeal site is a roadside site on the western side of Keady Road. It comprises a central section of a larger site used for mechanical repair of vehicles, consisting of three buildings and an additional office portacabin. The northern and southern boundaries of the site are undefined. The western boundary is defined by a concrete wall varying in height from approximately 1.4m – 2.0m. Immediately adjacent to this wall on the western side, there is a watercourse situated around 2m below the appeal site. The eastern (roadside) site boundary is defined by 3m high paladin fencing and a 0.5m high retaining wall. Within the red line boundary of the appeal site there is one building for mechanical repairs and the office portacabin. The surrounding yard comprises of concrete hardstanding, except for a hardcore section adjacent to the western and southern boundaries of the existing mechanical repairs building within the appeal site. There are manholes within the concrete area. On the eastern side of the Keady Road opposite the appeal site there is another area of enclosed concrete hard standing. Containers are within this area which the Appellant confirmed are within his control. The wider area around the appeal site is largely agricultural in nature, with isolated dwellings and farm buildings scattered throughout. The settlement of Keady is located approximately 0.5 miles to the south.
7. The Appellant clarified at the site visit that he had provided additional drawings to address the Council's concerns when the appeal was lodged in lieu of a Statement of Case. The Council upon reviewing these plans raised concern that the additional drawings deviated from those plans considered by them due to the increase in the floor area from 291.245m² to 352.35m². Given that the increased size of the building amounts to a material change to the proposal which is significant of itself and could create third party prejudice if I were to consider such an amendment, the updated plans are inadmissible. I will therefore proceed to decide this appeal on the plans submitted at planning application stage.
8. It is common case that the principle of development is acceptable at this location. However, the Council raised Policy PED 9 of PPS 4 as an objection to the proposal. This policy relates to general criteria for economic development proposals and criterion (c) thereof requires proposals to not adversely affect features of the natural or built heritage. The Council's concerns regarding natural heritage matters relate to the impact of the proposal on a watercourse immediately to the west of the appeal site. They raised no objections under Planning Policy Statement 2: Natural Heritage.
9. The Council's concerns emanate from advice provided by NIEA: Water Management Unit (WMU). WMU's concerns appear to be with the operation of the wider site and not limited to the replacement workshop and associated external works proposed within the appeal site boundaries. WMU raised concerns that a vehicle workshop poses a significant risk to the aquatic environment. They further state that there is little evidence of any mitigation measures, including statutory permissions. They also require a full site drainage plan to fully determine the potential impact of the proposal.

10. WMU notes that foul sewage is to be disposed of to a 'septic tank'. The Appellant confirmed on site that there would be no toilets in the proposed replacement building. This is supported by the proposed floor plan drawing No. 06. Toilets within the existing building are not in use but were served by a septic tank below the concrete yard to the south of the existing building. The Appellant advised that W/C facilities within the other buildings on the wider site would be used. As no toilets are proposed, there is no need for a septic tank to serve the replacement building. I am therefore satisfied that there would not be any significant harm arising to the aquatic environment as a result of the proposal from a foul sewerage perspective. In any event, even if there was a requirement for a septic tank, WMU recognises that Discharge Consent, issued under the Water (Northern Ireland) Order 1999 is required for the disposal of foul sewage from this development.
11. Regarding surface water drainage, WMU notes that it is to be disposed of to existing 'storm drains to a soakaway', however, no drawings have been provided of the existing drainage system. They go on to state that '*depending on the existing drainage arrangements, NIEA discharge consent under the terms of the Water (Northern Ireland) Order 1999 may also be required for the discharge of site drainage from the proposed development*'. They have no records of receiving an application or issuing NIEA consent for the discharge of this site's drainage.
12. The Appellant's existing site plan drawing (No. 02) shows an inspection chamber and manhole. The proposed site plan drawing (No. 03) also shows the inspection chamber, the manhole and a discharge point to the adjacent watercourse. Both the inspection chamber and the manhole are visible. On site, the Appellant identified the location of the discharge point, which was also in place, below ground. Drawing No. 03 (proposed site plan) also shows the yard to be concreted. Furthermore, Lisbane Consultants provided a supporting letter stating that, 'there is an existing storm drainage system in place that has served the existing premises for a number of years'. They state that there would be no increase in the size of the building or the concrete yard area and, as such, there would be no increase in storm run-off from the proposal over what already exists on site. They also state that the existing drainage system would be used to service the replacement building, as the yard to the rear of the building is gullied and any storm water collected in the gullies then connects to the existing drainage system. Moreover, they add that the area to the front of the building is also gullied and connected to the existing storm drainage system. Furthermore, as is presently the case surface water in connection with the proposal would be collected and discharged to the existing watercourse, ensuring that there would be no surface water flooding on the site. None of this was disputed by the Council.
13. At the site visit, the Appellant confirmed that there was no wheel wash on site nor was there a need for one, further, the site is already concreted, and this is unlikely to change. WMU also required clarification on whether refuelling facilities formed part of the appeal proposal and whether vehicle washing would occur on site. I did not observe any fuel pumps, tanks or refuelling taking place nor any vehicle washing facilities. As per the proposed drawings, there is no persuasive evidence that such activities are indeed proposed. Even if they were to take place, any potential discharges of fuel or wash waters into the adjacent stream could be adequately mitigated by the Council's suggested condition requiring, what they call, a Construction Method Statement. This would detail the preventative

measures to protect groundwater and other waterways during the construction and operational phases of the development, should planning permission be granted.

14. WMU requested details of where the vehicle maintenance would take place and where vehicles/parts would be stored and also sought clarification whether end-of-life vehicle (ELV) activities were taking place on site. At the site visit, the Appellant clarified that all maintenance works on the vehicles would take place within the replacement building which would have a concrete floor, in individual bays on a one way in and out system. Currently vehicles are collected from the concrete yard area outside the building and from the Appellant's wider site. This is unlikely to change owing to space restrictions surrounding the existing and proposed buildings. With regard to end-of-life vehicle (ELV) activities, I have no persuasive evidence to suggest that such activities take place currently or would do so within the confines of the appeal site or the proposed building. Furthermore, as the yard and the floor of the proposed building would be concreted, there would not be a pathway to the watercourse for any leakages from stored vehicles beyond the proposed drainage arrangements. Even if there were to be such leakages, the imposition of a condition requiring a 'Construction Method Statement' would ensure that there would be no unacceptable discharges to the aquatic environment. The Appellant also advised that they would be prepared to put in place interceptors or other measures, if necessary. These could be incorporated into the method statement.
15. The Appellant also clarified that oil would be collected in an 'oil drainer' and then put into tanks and stored in containers in the enclosed concrete yard on the opposite (eastern) side of Keady Road. The Appellant confirmed that any oil spills are currently and would be dealt with immediately. The nature and makeup of the proposed oil storage tanks is governed by separate legislation outwith the planning process, namely the Control of Pollution (Oil Storage) Regulations (NI) 2010 which the Appellant would be mandated to comply with. As I have no persuasive evidence to suggest that these regulations could not be enforced by the appropriate body, the Council's concerns regarding oil storage are not sustained. I am reinforced in this as the Appellant stated there has been no discharge complaints associated with the existing site which has been in operation for a number of years. This was not contested by the Council. Furthermore, the Council's Shared Environmental Services stated that there are no viable pollutant pathways or effects to any European designated site due to the distances involved.
16. A further issue raised by WMU relates to the PSV inspection chamber indicated on the proposed floor plan (Drawing No. 06). They state that if the development includes underground structures (tanks), then, should the Water Table be encountered during these works, in accordance with the Water Abstraction and Impoundment (Licensing) Regulations (Northern Ireland) 2006 (as amended) it is a mandatory requirement that upon the abstraction and/or diversion and/or impoundment of water from the natural river channel/lake, coastal or groundwater sources, an abstraction/impoundment licence should be obtained unless the operations specified are Permitted Controlled Activities. Whilst the Council and WMU raise this as a potential issue, water abstraction matters fall within a separate regulatory control regime. Furthermore, there is no persuasive evidence to suggest that the water table would be impacted, particularly as the appeal site is some 2m above the adjacent watercourse.

17. As noted above, whilst NIEA discharge consent under the terms of the Water (Northern Ireland) Order 1999 and other consents may be required for this proposal, these are separate processes above and beyond the planning process which the Appellant must comply with. NIEA discharge consent can also impose whatever conditions are deemed necessary to safeguard water quality. It is not for the planning system to duplicate other statutory controls. Planning decisions must be made on the basis that pollution control regimes will be properly applied and enforced. The relevant expertise and statutory responsibility for pollution control rests with the relevant pollution control authorities. I am satisfied, subject to the conditions set out below that a properly applied and enforced NIEA discharge consent under the terms of the Water (Northern Ireland) Order 1999 would ensure that there would be no adverse impact on the adjacent watercourse.
18. Whilst the Appellant could have provided clearer and more detailed drawings relating to both existing and proposed drainage regimes on the appeal site, given the clarification of same obtained on-site and having regard to the Lisbane Consultants report and my own observations, I am not persuaded that insufficient information was before the Council to determine the proposal. In the evidential context provided and for the reasons given, I am satisfied that, criterion (c) of Policy PED 9 and the related provisions of the SPPS are met. The Council's reason for refusal is not therefore sustained.
19. As the reason for refusal has not been sustained, the appeal is allowed, subject to the conditions set out below.

Conditions

1. No development shall commence until a detailed Construction Method Statement covering both the construction and operational phases of the development hereby approved, has been submitted to and approved in writing by the Council. This shall include pollution prevention measures to protect groundwater and other waterways as defined by the Water (Northern Ireland) Order 1999. The development shall be carried out and implemented in accordance with the approved Construction Method Statement.
2. The development shall be begun before the expiration of five years from the date of this permission.

This decision is based on the following drawing: -

- 1:2500 scale "Site Location Map," Drawing No. 01 date stamped received by Council on 9th December 2020.
- 1:500 scale, 'Proposed Site Plan, Drawing No. 3 date stamped received by Council on 9th December 2020.
- 1:100 scale, 'Proposed Floor Plan' plan, Drawing No. 6 date stamped received by Council on 30th November 2020.
- 1:100 scale 'Proposed Elevations' Drawing No. 07 date stamped received by Council on 30th November 2020.
- 1:100 scale 'Proposed Elevations' Drawing No. 08 date stamped received by Council 30th November 2020.

COMMISSIONER KIERAN O'CONNELL

List of Appearances

Planning Authority: - David MacRrory (Armagh City, Banbridge & Craigavon Borough Council).

John Law (Armagh City, Banbridge & Craigavon Borough Council).

Appellant: - Mr James Wilson (Appellant)
William Fullerton (DA Architects)
Sam Nicholson (DA Architects)

List of Documents

Planning Authority: - Statement of Case by Armagh City, Banbridge & Craigavon Borough Council.