
Appeal Reference:	2022/A0180
Appeal by:	Mr. James and Maritta McLornan
Appeal against:	Refusal of outline planning permission
Development:	Site for dwelling and garage
Location:	20m east of 49 Loughview Road, Ballyginniff, Crumlin
Planning Authority:	Antrim and Newtownabbey Borough Council
Application Reference:	LA03/2021/0872/0
Procedure:	Written representations and Commissioner's site visit on 12 th August 2024
Decision by:	Commissioner Diane O'Neill, dated 16 th August 2024

Decision

1. The appeal is dismissed.

Reasons

2. The main issue in this appeal relates to whether sufficient information was provided in order to enable a full assessment of the proposal.
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 Antrim Area Plan 1984-2001 (AAP) operates as the local development plan for the area where the appeal site is located. The site is outside any settlement development limit within AAP and is in the countryside. The AAP has no material policies for dealing with the proposed 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 are Planning Policy Statement 2: Natural Heritage (PPS 2) and Planning Policy Statement 21: Sustainable Development in the Countryside (PPS 21) which provide the relevant policy context for the appeal proposal.
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 residential development are outlined. The Council raised no objection to the principle of development.

6. The appeal site is however located approximately 40m to the east of Lough Neagh and Lough Beg Special Protection Area (SPA) and Ramsar site as well as Lough Neagh Area of Special Scientific Interest (ASSI). Lough Neagh has been designated as a SPA, Ramsar and ASSI for its quality features including aggregations of non-breeding and breeding birds, freshwater and estuarine fish assemblages, invertebrate assemblages, and terrestrial habitat features including fens, purple moor-grass and rush pastures, reed beds, swamps and wet woodlands.
7. Department of Agriculture, Environment and Rural Affairs (DAERA) Natural Environment Division (NED) stated in their evidence that the proposed development is hydrologically linked to the Lough via an undesignated watercourse which flows east to west along the southern boundary of the appeal site. Policy NH 2 of PPS 2, which is part of the basis for the reason for refusal for the appeal, states that planning permission will only be granted for a development proposal that is not likely to harm European and any other statutory protected species. Paragraph 5.3 of Policy NH 2 highlights that it is a criminal offence to harm a statutorily protected species. Policy NH 5 of PPS 2, which is also the basis for the reason for refusal, states that planning permission will 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 and species or features. A similar approach is advocated within the SPPS, also the basis for the reason for refusal. The habitats, species and features are material considerations in the determination of planning proposals.
8. The appellants referred to Policy CTY 10 of PPS 21 in their statement of case however no objection has been raised to this policy.
9. Despite its hydrological linkage, no ecological information was submitted with the planning application. NED therefore requested information in relation to the habitats and species, such as bats and otters, that may be impacted by the development. Bats and otters are European Protected Species under the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended) and are subject to a strict level of protection. Due to the legal protection afforded to them, a precautionary approach must be taken when assessing plans or projects likely to have an impact on these species. As a result, a Preliminary Ecological Appraisal (PEA) was required to assess the site for potential natural heritage interests including priority habitats, protected and/or priority species. This was requested by NED on 3rd March 2022.
10. The appellant submitted a PEA on 8th March 2022. The Council, as the competent authority under the Conservation (Natural Habitats, etc.) Regulations (NI) 1995 (as amended), considered this PEA to be inadequate in terms of information on the impact of the proposal on protected and/or priority species. The report also did not detail the qualifications and experience of the individual(s) who carried out the site survey conducted on 4th March 2022. In correspondence dated 20th June 2022 NED requested further information regarding the relevant experience of the surveyor in relation to protected species. DAERA guidance on the completion of a PEA (Preliminary Ecological Appraisals NIEA Specific Requirements, NIEA, 2nd March 2018) states that the applicant must ensure that the commissioned surveyor(s) have the necessary experience and qualifications to carry out this work. The qualifications and experience of all surveyors must be included in the

survey work. They also recommend that the surveyor(s) is a member of the Chartered Institute of Ecology and Environmental Management (CIEEM). Links to the relevant survey specifications were provided in the NED consultation responses.

11. On 5th July 2022 the appellants provided information which stated that the PEA was prepared in house by Mr Shan Convery who possessed a postgraduate diploma in Environmental Studies and had 15 years' experience. Based on the information provided, the appellants were notified by the Council on 8th September 2022 that NED were not satisfied that the PEA submitted met the NIEA survey specification. NED stated that it would be unlikely that the surveyor would be deemed suitably qualified to carry out a survey of protected species. Further information submitted by the appellants queried the need for the survey and stated that Mr Convery had 15 years' experience doing ecological studies for wind turbines and on farm buildings for Moy Park. They considered him to be at the forefront of helping farmers and food producers with environmental issues, developing and delivering agri-environmental projects for major Irish and UK producers and retailers. In their response dated 14th October 2022 NED reiterated their concern. They again requested that the PEA be submitted in line with NIEA survey specifications, detailing the relevant qualifications and experience of the surveyor in relation to protected species. No such information was forthcoming by the appellants.
12. Irrespective of the appellants claim that other proposals in the area did not require such a survey, given its hydrological linkage, I accept that it is required in this instance. I am not persuaded that the surveyor used to complete the PEA submitted on 8th March 2022 had the necessary experience and qualifications to carry out the required work.
13. Planning permission for the proposal was refused on 19th December 2022. A new PEA completed by WM Associates dated 10th January 2023 was forwarded to the Council on 11th January 2023. This new information was not before the Council as the competent authority when it determined the planning application. The Council highlighted that the need for commissioned surveys to meet specific requirements has been confirmed by the courts most recently by the Court of Appeal in the matter of *Clare McCann v. Armagh, Banbridge and Craigavon Council [2022] NICA 60*.
14. The PEA dated 10th January 2023 formed the basis for the appellants statement of case evidence. The Council raised an objection to the consideration of this PEA as part of the current appeal.
15. Section 59(1) of the Planning Act (NI) 2011 states that a party to the proceedings is not to raise any matter which was not before the Council at the time the decision appealed against was made unless that party can demonstrate (a) that the matter could not have been raised before that time or (b) that its not being raised before that time was a consequence of exceptional circumstances. Section 59(2) states that nothing in subsection (1) affects any requirement or entitlement to have regard to (a) the provisions of the local development plan, or (b) any other material consideration.

16. The appellants were made aware on numerous occasions of the Council's concern in relation to the PEA submitted on 8th March 2022. They therefore had the opportunity to submit the new PEA before the planning application was determined in December 2022 and chose not to. No exceptional circumstances were presented by the appellants as to why this was the case. At any rate, it is noted that the PEA dated 10th January 2023 relates to a different proposal to that which is the subject of this appeal. The PEA dated 10th January 2023 is therefore inadmissible in the current appeal.
17. In the absence of a detailed and acceptable PEA, it has not been demonstrated that the proposal will not result in an unacceptable adverse impact on or damage to priority habitats, species or features. It would not be appropriate to impose planning condition/s to seek to address the matters at reserved matters stage as the potential effects of the development are unknown and they may not be able to be mitigated. There needs to be sufficient information to evaluate and decide on the likely significant effects and mitigation. The reason for refusal is therefore sustained and the appeal fails.

COMMISSIONER DIANE O'NEILL

List of Documents

Planning Authority
(Antrim and Newtownabbey Borough Council):-

Statement of Case PA 1
Rebuttal PA 2

Appellant (CMI Planners Ltd-agent):-

Statement of Case A 1