
Appeal Reference:	2022/A0213
Appeal by:	Mr D Savage
Appeal against:	The refusal of full planning permission
Proposed Development:	Retention of workshop and storage sheds; retention of extension of curtilage; retention of fencing; retention of extension to concrete apron with surface run off collection associated with existing vehicle storage and examination yard; and proposed 10 no. inspection racks and lighting (Amended Description)
Location:	Lands 5m north of 64a Killysorrel Road, Dromore, BT25 1LB
Planning Authority:	Armagh City, Banbridge and Craigavon Borough Council
Application Reference:	LA08/2019/0040/F
Procedure:	Written representations and Commissioner's site visit on 21 May 2024
Decision by:	Commissioner McShane, dated 25 June 2024.

Decision

1. The appeal is dismissed.

Reasons

2. The main issue in this appeal is whether sufficient information has been submitted to assess its impact on the environment.
3. Section 45 (1) of the Planning Act (NI) 2011 (the Act), requires the Commission 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 of proposals must be in accordance with the plan unless material considerations indicate otherwise. The Craigavon Area Plan 2010 (the Plan) operates as the LDP for the area. The appeal site is located outside any designated settlement development limit identified in the Plan; there are no operational plan policies pertinent to this proposal. Therefore, I turn to other material considerations.
4. The Strategic Planning Policy Statement for Northern Ireland (SPPS) is material to all decisions on individual planning applications and appeals. The SPPS identifies Planning Policy Statement 21: Sustainable Development in the Countryside (PPS 21) as a retained policy document. PPS 21 is applicable to planning applications for development located in the countryside.

5. Policy CTY 1 of PPS 21 lists a range of types of development, which in principle are acceptable in the countryside and that will contribute to the aims of sustainable development. Planning permission will be granted for non-residential development in the countryside in specific cases. This includes industry and business uses in accordance with Planning Policy Statement 4: Planning and Economic Development (PPS 4). Policy PED 2 of PPS 4 states that economic development uses in the countryside will be permitted in accordance with the provisions of the listed policies. This includes the expansion of an established economic development use in accordance with Policy PED 3 of PPS 4.
6. In addition, a proposal for economic development use is also required to meet all the criteria, (a) – (m), listed in Policy PED 9 of PPS 4. The Council argue that it has not been demonstrated that the appeal development complies with Criterion (f) of Policy PED 9, which requires that the development can deal satisfactorily with any emission or effluent. It is also argued that it has not been demonstrated that the appeal development complies with Policy CTY 16 of PPS 21 relating to development relying on non-mains sewerage.
7. The appeal site includes land that is not within the ownership of the Appellant. Consequently, Certificate C was signed and notice of the application was served correctly on 5/2/2019. Planning permission does not confer ownership. In the event of planning permission being granted, this would be a matter for the parties.
8. The appeal site (0.10 has) stands immediately to the rear of two roadside dwellings (Nos. 66 and 64a Killysorrel Road), adjacent to No.64 Killysorrel Road, and approximately 50m south of No.33 Oroory Hill. The appeal site is hard cored and there are several buildings and metal storage containers in situ. Notwithstanding photographs submitted with the appeal documentation that show the site operating as a yard for the storage and examination of vehicles, there were no cars in the yard at the time of my site visit. The inspection racks, which allowed for double storage of vehicles, are no longer in place. Several motorbikes were in evidence and a vehicle recovery lorry was present.
9. The application is partially for the retention of development, however, that does not negate the need to provide sufficient information to demonstrate that the development complies with policy. The Northern Ireland Environment Agency (NIEA) Water Management Unit (WMU) and Regulation Unit Land and Groundwater Team (RU LGW) express concerns about the lack of information submitted by the Appellant in relation to the existing and proposed development's potential impact on the surface water environment and risk to the environment.
10. The planning application was submitted in December 2018. There is no dispute that the Council requested additional information, based upon the NIEA consultation responses, on numerous occasions: including 21 February 2019; 18 April 2019; 8 April 2022; and 24 May 2022. The Appellant provided further information: including on 1 March 2022 and submitted a letter from O'Sullivan Mac Farlane Environmental Consulting, dated 6 June 2022. The NIEA consultation response, dated 7 July 2022, reiterates that the WMU and RU LGW found the information submitted to be insufficient to determine whether the development has the potential to adversely affect the surface water environment and to assess the environmental risks arising from the development.

11. The Appellant's Agent accepts that further information is required to demonstrate that the appeal development complies with the requirements of the SPPS, Criterion (f) of Policy PED 9 of PPS 4, and Policy CTY 16 of PPS 21. He states we "are fully dedicated to cooperating and providing all the necessary details to enable a thorough evaluation of the proposal's impact on sewerage and effluent management". He argues that this can be achieved by attaching a negative condition to the grant of planning permission requiring the necessary information to be submitted.
12. Adequate information must accompany a full planning application for retention of development. This enables assessment of the development including consideration of what conditions may be required to be attached to a grant of planning permission to ensure that the development is compliant with planning policy. This is particularly the case where there are concerns about potential land and water contamination.
13. The central tenet of the Appellant's argument is that he has been treated unfairly in that he was not specifically requested to submit information on the effective management of sewerage and effluent. Specifically, there is a dispute between the parties as to whether the response of NIEA dated 7 July 2022 was posted on the new Planning Portal, which replaced the EPIC system.
14. It was apparent from the first consultation response from NIEA, dated 21 February 2019, however, that NIEA had concerns about the lack of information submitted with the application. The Appellant is professionally represented and the NIEA Consultation Responses include a statement as follows "If you wish to discuss anything raised in our response, please do not hesitate to contact Planning Response Team (details above)". On this basis, I conclude that there is no unfairness.
15. In any event, a refusal notice was issued on 16 November 2022, which clearly states the reason for refusal. An appeal was lodged in March 2023. Statements of Case were required to be submitted by 14 September 2023. Notwithstanding this, the Appellant did not submit the necessary information to the appeal.
16. Insufficient information is available to enable an assessment of the impact of the development on the surface water environment and the risk to the environment. Accordingly, the Council has sustained its reason for refusal and the appeal is dismissed.

This decision is based on the following drawings:-

- LPA Drwg N.01: Site Location Map
- LPA Drwg No.02 (REV 3): Elevations and Site Plan

COMMISSIONER MCSHANE

List of Documents

Planning Authority:- “LPA 1” Statement of Case and Appendix
“LPA 2” Rebuttal Statement and Appendix
(Armagh, Banbridge and Craigavon Borough Council)

Appellant:- “APP 1” Statement of Case and Appendices
“APP 2” Rebuttal Statement
(niplanningpermission.co.uk)

