

Erratum

C/2013/0097/F

Full Planning Permission

Erratum

The following paragraphs of the Planning Committee Report are changed accordingly:

Paragraph 8.1

8.1 Whilst all of the issues raised by the objectors have been considered and assessed, the main considerations in the determination of this application relate to Planning history and fall-back; principle of the development (PPS4/PPS 16/SPPS); traffic/road issues; impact on amenity; flooding and land drainage; compatibility of development with adjacent land uses (PPS11); Impact on designated sites; and other matters.

Paragraph 8.12

8.12 However, as the objector has raised the issue of a fall-back position, there is a need to consider if the use as a blockyard, established through the CLEUD, has been abandoned. Officials have had regard to the tests set out by the *Court of Appeal in Hughes v Secretary of State for the Environment, Transport and the Regions & South Holland DC [2000]*. These tests include the physical condition of the building; the length of time for which the building had not been used, whether it had been used for any other purposes; and the owner's intentions. The buildings still remain and the physical condition, when the planning application was submitted, was that of a blockyard. A satellite image of the land shows blocks still on site in July 2011. The application was submitted in early 2013, about 18 months after the satellite image showed blocks on site. It does not appear that the land has been used for any other purpose, other than importing spoil onto the site in accordance with the previous permission and prior to the quashing of this decision, which is still on site. The owner's intention was to change the use of the blockyard to a caravan

park, which is the subject of this application. Having regard to these factors, it is not considered that the previous use has been abandoned. Were operations to resume, it is the officials planning judgement that enforcement action would not be appropriate given the history of the site and the factors considered above.

Paragraph 8.14

8.14 In this case, officials are of the opinion that, should the concrete blockyard use resume, that this industrial use in the countryside, with HGV's coming to and from the site, is likely to have a greater impact on the countryside and its environs than a tourism use of a holiday park . Therefore significant weight is apportioned to the fall- back position of the planning history as a material consideration. Weight to be attached to material considerations is a matter for the decision maker alone to determine. In *Tesco Stores Ltd v SOS for the Environment and ors (1995)*, Lord Hoffman said that providing the Planning Authority has regard to all material considerations, it is at liberty (subject to the *Wednesbury* unreasonableness test) to give them whatever weight the planning authority thinks fit or no weight at all.

Paragraph 8.16

8.16 In land use terms, the land is considered to be an industrial use which is considered under PPS 4 "Economic Development". This land does not form part or all of an industrial estate, and the redevelopment for proposals to a use other than for economic development, is limited. However, tourism is one of the uses that is considered to be acceptable, with policy PED 4 stating that proposals for the redevelopment of economic development sites for tourism will be viewed sympathetically, provided this does not involve an existing industrial estate and the following criteria can be met:

Remainder of Paragraph 8.16 remains unchanged.

Paragraph 8.32

8.32 Approximately 30% of this site will be for open space in accordance with TSM 6. This figure includes the landscaped buffer/bund and, without this buffer/bund included in the open space calculation, the proposal still delivers some 20% which is

over the normal requirement of 15%. Therefore, there is appropriate land within the development for communal open space, designed as an integral part of the development. This includes a defined open space play area and a landscaped walk with viewing platform to the south of the site.

Paragraph 8.47

8.47 Objectors have raised issue with the lack of a footpath extending the extent of Ballymacrea Road to Ballywillan Road, and extending the existing footpath on the Ballywillan Road up to the Ballymacrea Road. Officials have investigated this matter with DfI Roads and, as the competent authority on such matters, DfI Roads considers the proposal does not justify a footpath of this length. Officials are satisfied with this position.

Paragraph 8.72

8.72 There is also the possibility of a connection to the SAC notwithstanding the distance.

Paragraph 8.73

8.73 NIEA: Natural Environment Division has been consulted as the competent authority on ASSIs. It has considered potential damage to the geological features of Craigahulliar ASSI through contamination (e.g. metals, hydrocarbons, VOCs, leachates). It has assessed that although the proposed site is immediately adjacent to Craigahulliar ASSI, it lies outside the boundary of the designated site. Natural Environment Division are content that the proposal will not impact upon the geological features of the designated site, provided all construction activity and materials (including spoil, sediment and run off) are confined within the site boundaries and the designated area is not disturbed in any way.

Paragraph 8.74

8.74 The SAC is also taken into consideration.

Paragraph 8.75

8.75 It is recommended that a robust protection of the ASSI and the SAC requires a condition to be attached ensuring the SAC and ASSI is protected. This would demonstrate how construction activities are to be controlled to protect the SAC and ASSI from

potential adverse effects. The report would set out the specific construction activities to allow further consideration. Whilst NIEA has referenced spoil, the officers are also cognisant of issues of run off and the watercourse on the site. Whilst the judgement of the officials is that a condition can ensure the construction activities are confined, it would be prudent for the condition to retain control of the assessment of the process. With that in mind it is recommended that the Council impose a condition requiring a Construction Environmental Management Plan (CEMP) be submitted by the developer and agreed in writing with the Council in advance of any development. That CEMP will allow the objectives of environmental protection and confinement of materials on the site to be fully assessed and agreed to secure protection of the SAC and ASSI.

Paragraph 8.73 is changed to Paragraph 8.76.

Paragraph 8.77

8.77 Notwithstanding that many of the matters raised by objectors have been considered under the subject headings within this report, further consideration is given below to address any outstanding objections and issues:

- Coleraine Borough Council (CBC) employed the services of Peter Fleming of Fleming Mountstephen to carry out an independent planning report into this application. This report was for those members of CBC at that time, and gave an analysis and critique of the then DOE case officer's report. The relevant matters within that report have been considered, including the comments relating to the failure to consider policy PED 8 of PPS 4 (para 8.60).
- Any comments of the then DRD Minister, Danny Kennedy, are a matter for DfI Roads and are given limited weight in considering this application as substantial consultation and consideration with DfI Roads has been carried out.
- There is no requirement for an applicant to demonstrate need for a proposed holiday park as this is not a planning policy test.
- As this application was submitted before the introduction of the Planning Act (Northern Ireland) 2011, enacted in 2015, there was no legal requirement to carry out formal community consultation. However, in any event, consultation with the local community took place in an

event held at the Magherabouy Hotel on Wednesday 6th March 2013, prior to the application being submitted at the end of March 2013.

- Coleraine Borough Council Tourism Strategy - This document is afforded little weight as it was a Coleraine Borough Council document, it has not been through any public examination or inquiry and is not a statutory planning document. Furthermore, the Council has published the Causeway Coast and Glens Tourism Strategy in 2015.
- The issue regarding land ownership; it is important to state that the planning authority has no jurisdiction in land ownership disputes as this is a matter for the courts, and sits outside the remit of planning. Nevertheless, the planning authority does have a duty to ensure the correct certificate is signed on the P1 form as part of the application, and to ensure that no party is prejudiced. As this matter was challenged the planning authority has investigated this issue. In this regard, the planning authority informed the agent/applicant of a land ownership challenge. It was stated by the applicant's agent that all the land is within the applicant's ownership and the proposed road widening works are contained within the public roadway and verge. The relevant process of serving notice on DfI Roads who are in control of this land has been carried out, and the appropriate certificates have been signed. The planning authority is satisfied that no prejudice has been caused to interested parties involved. An informative will be added to any decision advising that the permission does not confer title and it is the responsibility of the developer to ensure they control all the lands necessary to carry out the proposed development.
- In relation to the planning history of the site, there was a 1974 application (C/416/74) for quarrying on site, with a 15 year condition on the restoration of the land. It is considered that remediation matters are now immune from enforcement. It must also be noted that the CLUD (C/2008/0191) for the blockyard referred to in para 8.8-8.15 of this report means that this use is established, and can resume.
- Effect on local wildlife (Nearby reservoir) – A Habitats Regulation Assessment and a Phase 1 Habitat & Protected Species Survey have been carried out. NIEA NED has

been consulted and raises no objection on ecology grounds subject to conditions. The reservoir is located close to Corbally Road, and about 300 metres from the application site. It is unlikely the proposal will have any detrimental impact on this reservoir and is consistent with Policies NH 2 and NH 5 of PPS 2.

- Drawings and cross sections have been submitted indicating existing and proposed site levels.
- Regard has been given to Standing Advice Note 23 which says that all proposed developments should connect to a mains sewer, where available, and providing that the sewer and associated Waste Water Treatment Works (WWTW) can take the additional load. This proposal will connect to mains and NIW has indicated that this is possible. It is considered that the conditions set out in this advice note are not relevant to this application when assessing the nature and type of proposal.

The following Planning Conditions are amended accordingly:

3. The development hereby permitted shall not be occupied until the remediation measures as agreed in the remediation strategy has been implemented and carried out in accordance with its terms. Prior to the commencement of the remediation work the Council must be given four weeks advance written notification of the date when works are to start, to enable NIEA to visit the site during the works on-site.

Reason: Protection of health and environmental receptors to ensure the site is suitable for use.

4. If during the development works, new contamination or risk is encountered which has not previously been identified, works shall cease and the Council shall be notified immediately. Any new contamination or risk shall be fully investigated and a report furnished to the Council in advance of any further works on site. The Report to be furnished and agreed shall include a remediation strategy and programme of works or measures to address any issues arising, and shall be agreed in writing with the Council before any further works are carried out.

Reason: Protection of health and environmental receptors to ensure the site is suitable for use.

5. After completing all remediation works under Conditions 3 and 4; and prior to the occupation of the development, a verification report shall be submitted in writing and agreed with the Council. The verification report shall present all the remediation and monitoring works undertaken and demonstrate the effectiveness of the works in managing all risks and achieving the remedial objectives.

Reason: Protection of health and environmental receptors to ensure the site is suitable for use.

13. A Construction Environmental Management Plan (CEMP) shall be finalised and agreed in writing with the Council at least 8 weeks prior to works commencing. This plan shall set out: details of the construction activities; objectives of protection of the ASSI and; all the mitigation and avoidance measures to be employed to ensure protection of the ASSI.

Reason: To protect the integrity of the geological features of Craighulliar ASSI.

14. All fencing to the east and south of the site to be constructed of badger friendly fencing.

Reason: To safeguard badgers access to feeding grounds.

Recommendation

That the Committee notes the content of this erratum, and agrees with the recommendation to approve as set out in the Committee Report.