

# Agenda Item 9

<b>Item/Min Ref:</b> <b>Item 9</b>	<b>Title of Report:</b> <b>Planning Appeals</b>	<b>Officer presenting:</b> <b>Principal Planning Officer (Acting)</b>  <b>Author: Principal Planning Officer (Acting)</b>
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## 1 Purpose of Report/Recommendations

To appraise members on Planning Appeals currently in the system following the transfer of planning functions to this council on 1<sup>st</sup> April 2015.

## 2 Background

2.1 The Planning (2011 Act)(Commencement No.3) and (Transitional Provisions) Order 2015 sets out transitional provisions for a number of the planning functions carried out by the Department prior to the transfer of the majority of functions to local government on 1<sup>st</sup> April 2015. Paragraph 3 applies to appeals against a relevant decision or determination of the Department under the 1991 Order (or any order or regulations made under the 1991 order) which was made prior to the transfer date. The transitional provisions state that any appeal made to the PAC before the transfer date (1st April 2015) and has not been decided by that date by the PAC, then for the purposes of the appeal the relevant decision shall be treated as if it has been made by the appropriate council. It goes on to state that if an appeal has not been made to the PAC by 1<sup>st</sup> April 2015, but the time limit prescribed in the 1991 Order for making such an appeal has not expired before the transfer date, again the relevant decision shall be treated as if it has made by the appropriate council.

## 3 Key Issues

3.1 Members should note the following applications that were refused by DOE prior to 1<sup>st</sup> April 2015. The appellant has submitted an appeal to the Planning Appeals Commission and in accordance with transition provisions the council is now defending the appeal on the grounds stated below.

- a) J/2011/0272/F – Applicant Tyrone Sand and Gravel Ltd Old Bridge Road, Victoria Bridge, Strabane at lands located c. 250m west of the northern junction of Old Bridge Road with Mulvin Road and 240m west of 1 Old Bridge



Road, Victoria Bridge and lands located immediately north-east of no 5 Derg Road, Victoria Bridge, Strabane.

Westerly extension (retrospective) to existing sand pit and proposed proximate south-western extension to existing pit to provide for extraction of sand and gravel, and full restoration of site. Works also include: retrospective retention of mobile washing plant, crushing plant and mobile screener, removal of unauthorised static washing plant, replacement of unauthorised office with new office block, new toilet block, realignment of internal haul roads and staff parking.

Refusal reasons –

- i) The proposal is contrary to Policy MIN1) of the Department's Planning Strategy for Rural Northern Ireland in that the development would, in that the proposal has endangered a protected species under The Wildlife (Northern Ireland) Order 1985 (As Amended).
- ii) The proposal is contrary to Policy MIN6 of the Department's Planning Strategy for Rural Northern Ireland in that the development would, if permitted, does not have regard for the amenity of the nearest sensitive receptors.
- iii) The proposal is contrary to Policy MIN7 of the Department's Planning Strategy for Rural Northern Ireland in that the development would, if permitted, prejudice the implementation of the A5 Western Transport Corridor Dualling Project.
- iv) The proposal is contrary to the Department's Planning Policy Statement 2, Natural Heritage, in that the proposal has endangered a protected species under The Wildlife (Northern Ireland) Order 1985 (As Amended).
- v) The proposal is contrary to Planning Policy Statement 3, Development Control: Roads Considerations in that it would, if permitted, prejudice the implementation of the A5 Western Transport Corridor Dualling Project.
- vi) The proposal is contrary to Policy CTY1 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the proposal is contrary to Policies MIN 1, 6 and 7 Policies contained within PSRNI.

b) J/2012/0390/F - Appellant Tyrone Sand and Gravel at lands located c. 250m west of the northern junction of Old Bridge Road with Mulvin Road and

240m west of 1 Old Bridge Road, Victoria Bridge and lands located immediately north-east of no 5 Derg Road, Victoria Bridge, Strabane.

Enabling works relating to J/2011/0272/F and retrospective permission to retain settlement ponds, stockpiles of gravel, and other associated works

Refusal reasons –

- i) The proposal is contrary to Policy MIN1 of the Department's Planning Strategy for Rural Northern Ireland in that the Department cannot adequately assess the impact the proposed development will have on the following;
  - a. River Foyle and Tributaries Area of Special Scientific Interest (ASSI) and Special Area of Conservation (SAC);
  - b. The Built heritage;
  - c. The ecology;
  - d. The management of extractive waste.
- ii) The proposal is contrary to Policy MIN2 of the Department's Planning Strategy for Rural Northern Ireland in that the development would, if permitted, harm the visual amenity of the countryside as it does not benefit from any proposed landscaping or mitigation measures will not be well integrated into the surrounding landscape.
- iii) The proposal is contrary to Policy MIN6 of the Department's Planning Strategy for Rural Northern Ireland in that the from the information provided with this proposal, the Department cannot fully assess the impact the proposal will have on the safety and amenity of occupants in nearby dwellings.
- iv) The proposal is contrary to Policy MIN7 of the Department's Planning Strategy for Rural Northern Ireland in that the development would, if permitted, prejudice the implementation of the A5 Western Transport Corridor dualling project which is contained in the Investment Delivery Plan (IDP) for Roads Service.
- v) The proposal is contrary to Policy MIN 8, the policy requires the inclusion of satisfactory restoration proposals. The applicant has failed to supply the Department with any form of restoration for the proposed development.
- vi) The proposal is contrary to the Department's Planning Policy Statement 2, Planning and Nature Conservation, the Department, cannot

- adequately assess the impact the proposed development will have on the following;
- a. River Foyle and Tributaries Area of Special Scientific Interest (ASSI) and Special Area of Conservation (SAC);
  - b. The ecology;
  - c. The management of extractive waste.
- vii) The proposal is contrary to Planning Policy Statement 3, Development Control: Roads Considerations in that it would, the proposal is within the proposed vested area for the A5 Western Transport Corridor dualling project which is contained in the Investment Delivery Plan (IDP) for Roads Service and would, if permitted, prejudice the implementation of this project.
- viii) The proposal is contrary to Policy BH1 of the Department's Planning Policy Statement 6: Planning, Archaeology and the Built Heritage in that the applicant has failed to provide the Department with any information on the impact of the proposed development on archaeological sites. As such the Department cannot adequately assess the impact of the proposal on these archaeological sites.
- ix) The proposal is contrary to Policy CTY1 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the proposal is contrary to Policies MIN 1, 2, 6, 7 and 8 Policies contained within PSRNI.

#### **4 Financial and Other Implications**

4.1 The issues of the award of costs in the event of an appeal is now an important issue for Council. However paragraph 3 (5) of The Planning (2011 Act)(Commencement No.3) and (Transitional Provisions) Order 2015, states that for an appeal made to PAC against relevant decisions or determinations of the Department under the 1991 Order before the date of transfer (1<sup>st</sup> April 2015), the award of costs shall not apply.

#### **5 Recommendations**

5.1 That you note the recommendation to defend the refusal reasons as outlined above.

#### **Background Papers**