

Julie McMath

From: Matt Kennedy <
Sent: 27 September 2021 14:57
To: Julie McMath; Denise Dickson
Cc: 'Ryan McLaughlin'; 'Kevin Cartin'; info@careyconsulting.co.uk
Subject: RE: Crossnadonnell Site - Limavady
Attachments: Re: FW: Crossnadonnell Site - Limavady

Julie

I refer to your earlier email in relation to the above planning application.

I attach our response from Mr Brendan Carey on the issues raised by NI Water.

However, Council have not addressed the issue of the “**material start**” made on this serviced site, evidenced in our previous letter of 2/9/21 which is a matter for Council Planning to determine.

Please confirm if NI Water have been advised by Planning of this material start which is a significant material consideration.

Council's initial assumption that this was an outline permission, was incorrect and this full permission has been fully implemented with all services available.

NI Water have confirmed that in these circumstances they will honour extant permissions such as this proposal. This resolves the case for the first house.

The second house can be dealt by a pre-commencement condition requiring the upgrade of Limavady sewage network prior to commencement and a 6 year time period condition. Please note NI Water's June 2021 letter to Council allowing the Gorteen Application to be approved.

Planning conditions can allow the resolution of this planning application with no requirement to go back into a further consultation process with NI Water. I note that Planning has on 31/8/21 issued permission for the other undeveloped site in Crossnadonnell and note no objections from NI Water for this proposal. The first house element of this proposal now sits on all fours with this permission.

I believe that if planning applications can be approved they should be approved. This is clearly a proposal which can be resolved by planning condition and Council have issued similar approvals in the last 3 months in Limavady.

Our Client requests that this application now issue as a delegated approval decision or be returned to the next meeting of the Council's Planning Committee.

Best regards

Matt

Matt Kennedy
Principal Planning Consultant

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Julie McMath

From: Carey Consulting <Info@careyconsulting.co.uk>
Sent: 24 September 2021 11:47
To: Matt Kennedy
Cc: Ryan McLaughlin; Kevin Cartin; Aoibhinn Roarty
Subject: Re: FW: Crossnadonnell Site - Limavady
Attachments: NI Water Correspondence 22.06.21.pdf

Matt,

We confirm our receipt of the copy email from Ms Julie McMath dated 7th September (see copy below) and comment as follows:

1. Given that there was and is an Article 17 in respect of this site we submit that NI Water's stated position is flawed. MKA Planning have provided confirmation that the site has an extant full planning approval for serviced sites including the subject plot. Proof has been provided of the foul and storm sewer service tails provided earlier by the developer under the Article 17 approval and the subject site is therefore a serviced site for which there is an extant planning approval(B/1997/0314) and sewer connection approval. I suggest that the Council's planning department should re-consult NI Water on the basis that the applicant has now provided evidence of an extant planning approval for a serviced site and ask them to reconsider their position in respect of one of the two dwelling plots. I note that NI Water have recently advised the development industry that they will honour connections to sites that have planning approval and therefore in the interest of fairness and equity they are in my opinion duty bound to remove their objection to one of the two plots (given the extant serviced dwelling plot approval).
2. In regard to the WWIA suggestion by NI Water we submit that the cost of an assessment (£1560) and that the findings of any WWIA are likely to require stormwater off setting the overall costs and delay are likely to make this two dwelling development proposal non-viable.
3. We submit that in keeping with Item 1 above one of the dwellings should be approved in light of the extant approval. In regard to the second dwelling given that we have provided confirmation that senior NI Water personnel (Steve Blackwell - Head of Investment Management) have advised that the Limavady sewer will be upgraded during the course of the funding period PC21 (which means the period up to April 2027 ie: up to 5 and a half years from now) - see attached copy correspondence dated 22nd June 2021. From subsequent discussions with NI Water it would appear likely that the Limavady sewer network will be upgraded in the next one to two years however this is subject to funding being finalised.

In summary, we submit there is no valid justification for releasing an unfettered approval for one dwelling. The second dwelling can readily be approved given that NI Water have formally confirmed in their enclosed correspondence of 2nd June that they have a programmed ***"project for the upgrading of the Limavady Wastewater Network within its PC21 Business Plan (2021/22 to 2026/27)."*** We suggest that as the Business Plan runs to April 2027 then the approval should perhaps be granted for a six year duration rather than the normal five years to match NI Waters Business Plan timeframe.

We trust the above will assist in progressing the subject planning application to a positive determination.

Regards,

Brendan

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FAO Denise Dickson
Head of Planning
Causeway Coast and Glens Borough Council,
Cloonavin,
66 Portstewart Road,
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BT52 1EY.

Date: 22/06/2021

Dear Denise,

Limavady - Planning Application LA01/2016/1265/RM - LM 61/18

NI Water wishes to communicate to members that the company has repeatedly identified that there are sewer capacity issues in Limavady and that no new connections will be permitted to that infrastructure.

A summary of the current existing issues and their impacts as well as outstanding questions that need to be addressed are provided below:

- NI Water has identified that there is already regular out of sewer flooding in the area causing environmental and amenity issues.
- The proposed development, due to its hydrological links to a number of designated sites, must be subject to a Habitats Regulation Assessment and can only proceed if it can be shown that the proposed development will not adversely affect the integrity of the designated site.
- The Council is bound by the Habitats Regulations Assessment
- The Habitats Regulation Assessment carried out by Shared Environmental Services concluded that the development can only proceed if two mitigation measures are conditioned. That mitigation includes draft condition 18.
- The Council can only lawfully grant consent if it includes the two mitigation conditions identified by Shared Environmental Services as part of the Habitats Regulation Assessment.
- If the Council grants planning permission without condition 18, that decision will be amenable to judicial review.
- The Council, when screening out the requirement for an Environmental Statement, relied on the ability to impose a condition which adequately addressed the sewer capacity issues. If the Council does not impose such a condition, the applicant must submit an Environmental Statement.

It is evident that further inputs to the system are likely to have a detrimental impact on the performance of the wastewater network, on customers and the environment.

If the Council proceeds to grant planning permission without condition 18 as presently drafted, it would be doing so in breach of both the EIA Regulations and Habitats

Regulations. The Council would be acting ultra vires, unlawfully and irrationally. Such a decision would be amenable to Judicial Review.

If the Council are minded to grant planning permission without condition 18, the Council should require the Applicant to submit an Environmental Statement and Shadow Habitats Regulation Assessment which comprehensively addresses and identifies the current "baseline" out of sewer flooding and associated environmental implications. The Applicant should then assess the environmental effects of the proposed development in cumulation with existing development, modelling a number of scenarios including where there are no upgrade works to the existing sewer network and set out any mitigation measures to address this.

On receipt of these documents and associated consultation responses the Council could then consider the application afresh and any proposed mitigation measures contained within the Environmental Statement and Shadow Habitats Regulation Assessment and either refuse or grant consent subject to conditions.

Councillors should note that NI Water has a project for the upgrading of the Limavady Wastewater Network within its PC21 Business Plan (2021/22 to 2026/27).

Please do not hesitate to contact me should any matter require further discussion or explanation.

Yours Sincerely,

S. J. Blockwell

Dr Stephen Blockwell
Head of Investment Management,
Asset Delivery Directorate.
Email: [REDACTED]@niwater.com