

**Laura Crawford**

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**From:** Dermot Nicholl [REDACTED]  
**Sent:** 21 June 2021 14:17  
**To:** Denise Dickson  
**Subject:** Fwd: LA01/2016/1265/RM - Planning Committee Meeting Wednesday 23 June

Hi Denise, see email I've received.

Dermot.

Sent from my iPad

Begin forwarded message:

**From:** Maria OLoan [REDACTED]  
**Date:** 21 June 2021 at 14:15:26 BST  
**To:** Joan.Baird@causewaycoastandglens.gov.uk, [REDACTED]  
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Sharon.Mckillop@causewaycoastandglens.gov.uk, philip.anderson@causewaycoastandglens.gov.uk,  
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edgar.scott@causewaycoastandglens.gov.uk  
**Cc:** [REDACTED]@causewaycoastandglens.gov.uk>, "Truesdale, Graham"  
[REDACTED]@niwater.com>  
**Subject:** LA01/2016/1265/RM - Planning Committee Meeting Wednesday 23 June

Dear Sir / Madam

**OUR CLIENT: NORTHERN IRELAND WATER LIMITED  
LA01/2016/1265/RM- APPROVAL OF RESERVED MATTERS  
PLANNING COMMITTEE MEETING 23 JUNE 2021**

We refer to the above planning application due to be considered by the Planning Committee on 23 June. We are instructed to act on behalf of Northern Ireland Water in respect of this matter. You may recall that this application was previously due to be considered by the Committee last year and that the applicant sought to raise objections in respect of the proposed inclusion of a planning condition to ensure satisfactory foul sewerage provision.

NI Water have repeatedly identified that there are sewer capacity issues in the locality of the proposed development causing environmental problems and that no new connections will be permitted to that infrastructure. Our client 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 impact the integrity of the designated site. The Council is bound by the outcome of the Habitats Regulations Assessment and has no discretion to deviate from the recommendations of the Habitats Regulation Assessment.

Shared Environmental Services carried out a Habitats Regulation Assessment and concluded that the development can only proceed if two mitigation measures are conditioned. That mitigation includes draft condition 18 as set out in the case officer's report:

"18. No dwelling hereby approved shall be constructed beyond sub floor until such times as a foul mains connection has been provided by NI Water in accordance with Article 154 of the Water and Sewerage Services (Northern Ireland) Order 2006 (as amended, Water and Sewerage Services Act (Northern Ireland) 2016, or in the interim period an alternative means of disposal is agreed with NI Water, DEARA Water Management Unit and details submitted to and approved by Causeway Coast and Glens Borough Council.

Reason: To ensure a satisfactory means of foul disposal and to ensure no adverse effects on the conservation objectives or selection features of River Roe and Tributaries SAC and Lough Foyle Ramsar/SPA."

The purpose of this condition is to ensure no adverse effects on the River Roe and Tributaries ASSI/SAC and Lough Foyle ASSI/SPA/Ramsar (hereafter referred to as the designated sites) which are of international and national importance and are protected by Conservation (Natural Habitats, etc) Regulations (Northern Ireland) 1995 (as amended) and The Environment (Northern Ireland) Order 2002.

Under the Habitats Directive, the outcome of an appropriate assessment, such as that carried out by Shared Environmental Services is legally binding for the competent national authority and conditions its final decision:

"By contrast, under the second sentence of Article 6(3) of the Habitats Directive, a plan or project can be authorised **only** after the national authorities have ascertained that it will not adversely affect the integrity of the site"

(Case C-418/04 Commission v Ireland, paragraphs 229 – 231)

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 Appropriate Assessment. If the Council grants planning permission without condition 18, that decision will be amenable to judicial review.

## Conclusions

If the Council proceed 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.

Yours faithfully

MARIA O'LOAN

**MARIA OLOAN**

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In order to protect our staff, their families and our clients, our staff are now working remotely.

We are all still available by telephone and email and will ensure that you will continue to receive a prompt response.  
A complete list of contacts is available on our [website](#).

Thank you in anticipation of your understanding and cooperation.

# Tughans

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