

Watson, Stephen (planning)

From: [REDACTED]
Sent: 30 September 2019 11:51
To: DfI Private Office
Cc: Godfrey, Katrina (DfI)
Subject: CORRESPONDENCE - McAtamney Solicitors - request to call in PLANNING APPLICATION LA01/2016/1328/F
Attachments: McAtamney Solicitors - PLANNING APPLICATION FOR HOTEL COMPLEX.pdf

To have an official record best if attached is processed through Private Office procedures with decision to be taken on whose signature as I am unsure. Large set of documents attached which I will bring round to PO.

I have not acknowledged receipt.

[REDACTED]
[REDACTED] [Permanent Secretary's Office | Department for Infrastructure | Clarence Court | 10-18 Adelaide Street | Belfast BT2 8GB](#)

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Ms Katrina Godfrey
Permanent Secretary
Department for Infrastructure
7th Floor, Clarence Court
10 – 18 Adelaide Street
BELFAST BT2 8GB

26th September 2019

Our ref JMCA/IR/CON592

Dear Ms Godfrey,

Re: OUR CLIENTS : [REDACTED]
MAJOR PLANNING APPLICATION FOR HOTEL COMPLEX AT
BALLYREAGH ROAD PORTSTEWART
CAUSEWAY COAST AND GLENS BOROUGH COUNCIL
PLANNING APPLICATION LA01/2016/1328/F

We act on behalf of our above clients.

We write to renew our application for the Department to exercise its powers, under Section 29 of The Planning NI Act 2011, to call in this planning application. This is the third occasion on which our clients have felt compelled to make this request. We first made this request, on behalf of our clients on 17th October 2017, following upon a High Court order of 6th September 2017, quashing the Council decision to grant planning permission for this development as a result of pre action correspondence sent by our clients to the Council. This was the first occasion on which the Council mismanaged this process.

We then renewed our application to the Department on 26th January 2018, drawing the Department's attention to the Council's actions in responding to Freedom of Information requests lodged by [REDACTED] and again highlighting our concerns about the handling of this planning application by the Council.



HOME CHARTER
SCHEME
THE LAW SOCIETY OF
NORTHERN IRELAND

Director: John McAtamney, Solicitor Advocate

Solicitors: Lauren Davey LL.B.*

Caoimhe O'Kane LL.B. LL.M

THE LAW SOCIETY
OF NORTHERN IRELAND



*Member of the Children Order Panel

Vat Registration No. 899 5607 47

McAtamney Solicitors is a trading name of McAtamney Solicitors Ltd, a company registered in Northern Ireland with Company Number NI630476 and having its registered office at 8 – 10 John Street, Ballymena, Co Antrim, BT43 6DU

We now make our third request request for 'call in' in the extraordinary circumstances of the High Court having had to quash the planning permission granted for a second time, by way of its Order dated 13th September 2019. In our respectful submission this is unprecedented and public confidence in the Council's handling of this entire process has been grievously damaged by the High Court having had to intervene on two occasions and quash the Council decisions to grant planning permission.

We refer you to the most recent judgement by McCloskey LJ: enclosed herewith.

In considering this correspondence we ask you to read and carefully consider the entire judgement. You will note therein the judicial comment (paragraph 73) on the "notable breadth" of your powers under Section 29 and the recognition (paragraph 53) that the Department, unlike the court, is not restrained in the issues it can consider. It seems to us your power under Section 29 is unfettered.

You will note the emphatic and critical terms in which the Judge ruled against the council, upholding four grounds of challenge, any one of which would have warranted the quashing of the decision.

The four grounds being the significant issues of procedural unfairness, breach of the Planning Committee's Protocol, error of law in respect of Policy AMP3 and unlawful EIA screening decision.

Procedural Unfairness:-

This encompassed denial of [REDACTED] FOI rights, withholding of documentation, late delivery of limited documentation, unreasonable refusal of an adjournment of consideration of the planning application on 24 January 2018, denial of common law rights, the unfair conduct of the said planning committee meeting and breach of Article 41 of the Charter of Fundamental Rights of the European Union. And, all this, in the context that at paragraph 76 the Judge acknowledged that our clients were possessed of statutory and common law rights.

The Judge robustly found against the Council on all these points (paras 80-83), with findings, inter alia, that:

[REDACTED] by virtue of the procedural defects, was "deprived of the opportunity of deploying the full range of materials and arguments in support of a request to DFI that it exercise its 'call-in' statutory power";

██████████ was “disabled from advancing in particular the full story of the controversial easement”;

██████████ was deprived of the opportunity to make further representations relating to public law and/or planning considerations relating to “in particular (but inexhaustively) improper motive, conflict of interest, breach of protocol and the various ingredients of the DFI ‘call-in’ issue.”;

The diagnosis of procedural unfairness contaminating the Council’s decision making process as a whole “becomes irresistible when one grafts on ... the belated disclosure of further documents and substantially augmented material information to the Applicants via these proceedings.”;

██████████ was not afforded “a fair and reasonable opportunity to make considered, comprehensive, informed representations to either the Planning Committee or ... DFI”.

Moreover, and importantly, the Judge found (paragraph 70) that when the Council came to deal in sworn affidavits with issues relating to ██████████ deferral request at the Planning Committee on 24 January 2018, their averments were “misconceived and significantly erroneous”. It is the planning case officer (Mr Shane Mathers) that is the subject of this finding. In paragraph 71(a) the Council’s Head of Planning (Mrs Denise Dickson) is found to have made a “misleading and erroneous” statement in her affidavit.

A Council which so conducted itself must not be permitted to further consider this application.

Breach of Planning Committee Protocol:-

The Judge found the Head of Planning and the Chair of the Planning Committee failed in their duty to fairly and properly consider the holding of a site visit, as required in the Protocol governing their operations. The attitude of the Council to what the Judge described as the “solemn formalities” of the Protocol was lamentable and in our opinion speaks strongly to the undesirability of them retaining control over the determining of this planning application.

Error of law re Policy AMP3:-

The Judge was unequivocal in finding the council failed to address the policy incompatibility of both relocating and enlarging an extant vehicular access onto a protected route to provide access to the proposed hotel complex, despite ██████████ expressly articulating same in his objections. The planning officer’s report failed to convey to the Planning Committee ██████████ objection based on policy AMP 3 (para 124). This is a serious omission.

Moreover, the Judge was clear that AMP3 “does not recognise the mechanism of relocating an existing access” and that the planning officers misconstrued the policy.

The Judge was clear: the planning officer’s advice to the PC was flawed, with the case officer severely criticised (para 125&126) and a finding that matters were “quietly buried” (para 127).

It is our contention that the same planning office must not be allowed to handle this application again.

Unlawful EIA screening decision:-

The Judge was emphatic that there was clear breach of the EIA Regulations in the failure to carry out the “coastal zones” assessment required. The level of dissatisfaction with the planning officers is clear from paragraphs 205-207 of the judgement, including a finding that the evidence of both the case officer and the Senior Planning Officer was “quite unsatisfactory”.

It is an extraordinary situation, that on something as basic and important as environmental scrutiny, the Judge was compelled to reach such adverse findings.

Considering that our clients objections flagged these policy points for the council’s consideration, it is telling that nonetheless the wrong call (for the second time) was made on each.

Moreover, our pleadings articulated each upheld ground, yet the council instructed resistance to them all, indicating a mindset which dissipates our clients confidence in the council’s ability to further determine this application or be perceived to do so in an impartial manner.

Other points from the judgement:-

Even in respect of grounds of challenge not upheld by the Court - in respect of which the Department would be free to make its own planning judgement - the Judge nonetheless made several additional critical findings of irregularities of “unmistakable significance” (see in particular paragraph 187). These include breach of the duty of candour owed to the court, an internal valuation of an easement, the procurement of a second valuation report, post commencement of legal proceedings.

We also refer you to the enclosed transcripts, submitted in evidence by a then Causeway Coast councillor, Mr Padraig McShane, who was a member of the Planning Committee, of conversations he had with a Council solicitor, Mr

██████████ and in which he made serious accusations against the Chief Executive of the Council, of interfering in the planning process.

Conclusion:

Our clients do not believe a Council responsible for the aforesaid actions and inactions, culminating in substantial High Court findings against it, following twenty two days of court time at considerable public expense, should ever again be left to consider this application.

Frankly, our clients have no confidence in the capacity of Causeway Coast and Glens Borough Council, who have erred so fundamentally on two occasions, to determine this application fairly and properly, in accordance with the law.

This lack of confidence is overlaid with concerns that the scrupulous adherence to the demarcation which should exist between the Council corporate and its Planning Committee has not been observed. In this regard we refer you to our previous correspondence seeking "call in", in particular, the conduct and interventions of the Council Chief Executive, Mr Jackson. We draw your attention to the judicial view expressed at paragraph 80(h) in relation to "the continuing interaction between the Council's CEO and/or Director of Leisure Development with the developer postdating receipt of the planning application."

By reason of the matters canvassed herein and in our earlier letters of 17th October 2017 and 26th January 2018, we believe the point has been reached where it is essential in the public interest for the Department to exercise its powers under Section 29 of the Planning Act (NI) 2011.

We add that we may have been disadvantaged in fully articulating this request by the failure to date of the council to positively respond to our client ██████████ request for updated disclosure since the Council's Planning Committee decision of 24 January 2018. In consequence we do not know if there has been further communications involving the council, the planning applicant and any third parties which might of themselves provide further grounds for seeking call in.

If there have been any such communications involving your Department, then, we would expect you to reveal same.

Finally, we would ask you to direct the Council that it should take no steps towards reconsidering this planning application until you have made a decision on call in.

We look forward to your reasoned reply.

Yours faithfully


 for
McAtamney Solicitors

[REDACTED]

From: DfI PG Secretariat
Sent: 30 September 2019 15:02
To: [REDACTED]
[REDACTED] Nelson, Aileen; [REDACTED]
[REDACTED] Symington, Scott; Watson, Stephen (planning); [REDACTED]
(PLANNING)
Subject: FW: COR-0480-2019 : Planning Application LA01/2016/1328/F
Attachments: COR-0480-2019.msg; Permanent Secretary - DfI LETTERHEAD with logo.docx;
DfI COR Template - Background.DOCX

[REDACTED]

Aileen

Please see attachments and request below.

Please provide advice and a draft reply for signature by the Perm Sec

To be with private.office@infrastructure-ni.gov.uk not later than 09/10/2019, copying to PG Secretariat.

HPRM Ref will follow tomorrow as no one available to open container for me today.

[REDACTED]

[REDACTED]

Business Support
Planning Group
Department for Infrastructure
71 Ebrington Square
Derry~Londonderry
BT47 6FA.

[REDACTED]

-----Original Message-----

From: DfI Private Office
Sent: 30 September 2019 14:43
To: Kerr, Angus [REDACTED]
Cc: DfI PG Secretariat [REDACTED]

[REDACTED]

[REDACTED] DfI Press Office [REDACTED]

[REDACTED]

Symington, Scott

[REDACTED]
[REDACTED]
Nelson, Aileen

Thompson, Julie

[REDACTED]
Godfrey, Katrina (DfI)

Subject: COR-0480-2019 : Planning Application LA01/2016/1328/F

Raised By: Mr John McAtamney

Reference: COR-0480-2019

Subject: COR-0480-2019 : Planning Application LA01/2016/1328/F

Referred To: ANGUS KERR

Date referred: 30/09/2019

ACTION REQUIRED

Please provide advice and a draft reply for signature by the Perm Sec

To be with private.office@infrastructure-ni.gov.uk not later than 09/10/2019

Extensive hard copy document attached with letter will be delivered to RPD.

Please send HRPM links to background and draft response and ensure that Private Office and Perm Sec's Office have access to view and edit

For further information etc. contact:

[REDACTED]
Departmental Coordination Unit
[REDACTED]

Copied To For Information:

DfI PG Secretariat; DfI Private Office CC list, DfI Press Office cc list; RPD CC list; Corr Senior Management Team cc list

-----Original Message -----

From: J H Allister [REDACTED]

Sent: 10 October 2019 19:59

To: Denise Dickson (CC&G) [REDACTED]

planning@causewaycoastandglens.gov.uk

Cc: Dfl Private Office [REDACTED]

Subject: LA01/2016/1328

[REDACTED]


10 October 2019

Mrs D Dickson
Head of Planning

Dear Mrs Dickson,

Re:LA01/2016/1328/F

I wish to place on record my objection to you having proceeded to re-issue the statutory consultations in the above in circumstances where the Department for Infrastructure is considering a reasoned request from my solicitor for 'call-in'.

This preemptive action is injurious to my interests as an objector and my rights to fair administration.

I reserve all my rights.

Yours sincerely,



CC DFI

Watson, Stephen (planning)

From: Walker, Graeme
Sent: 16 October 2019 13:01
To: Nelson, Aileen
Cc: Watson, Stephen (planning); [REDACTED]
Subject: RE: Assessment of application for hotel at CCGC -
Attachments: CcandG EIR.PDF

Aileen

We do have a copy of the EIR papers after all (thanks [REDACTED]). Please see for your information.

Regards,

Graeme Walker
DFI Planning
Strategic Planning Directorate - Casework Team
71 Ebrington Square,
Derry~Londonderry,
BT47 6FA.



[REDACTED]

From: Walker, Graeme
Sent: 14 October 2019 16:30
To: Nelson, Aileen [REDACTED]
Cc: Watson, Stephen (planning) [REDACTED]; [REDACTED]
Subject: RE: Assessment of application for hotel at CCGC -

Aileen

Have searched through trim and also any papers the relate to the Hotel and unfortunately have come up blank, but my recollection is we did get the EIR papers, I have logged a call with the case work SPTO in CC&G to see if they can resend given there is a new call in request.

Regards,

Graeme Walker
DFI Planning
Strategic Planning Directorate - Casework Team
71 Ebrington Square,
Derry~Londonderry,
BT47 6FA.



Department for

Infrastructure

Airports

Bonneagair

www.infrastructure.gov.uk

From: Nelson, Aileen

Sent: 14 October 2019 14.32

To: Walker, Graeme [REDACTED]

Cc: [REDACTED]

Subject: FW: Assessment of application for hotel at CCGC -

Graeme

Do you know if Denise ever submitted the papers released under EIR as per your email below? There is a further request by Mr Allister to call in the application that we are currently considering.

Thanks

Aileen

Watson, Stephen (planning)

From: Symington, Scott
Sent: 24 October 2019 14:51
To: Denise Dickson (CC&G)
Subject: LA01/2016/1328/F (Portstewart Hotel)

Denise

I can confirm that DfI received correspondence from solicitors for [REDACTED] asking DfI to call in application LA01/2016/1328/F (Portstewart Hotel) on 30th September. The Department is currently considering its response and we will update you in due course.

Best regards

Scott

Scott Symington
Senior Principal
Regional Planning Directorate (DfI Planning Group)
Department for Infrastructure
Clarence Court
10-18 Adelaide Street
Belfast
BT2 8GB
[REDACTED]