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*Judgment: approved by the Court for handing down  
(subject to editorial corrections)\**

Delivered: 20/03/13

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

**QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)**

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**Sandale Developments Application [2013] NIQB 38**

**IN THE MATTER OF AN APPLICATION BY SANDALE DEVELOPMENTS  
LIMITED FOR JUDICIAL REVIEW**

**and**

**IN THE MATTER OF A DECISION OF THE DEPARTMENT OF THE  
ENVIRONMENT FOR NORTHERN IRELAND TO PRESENT OUTLINE  
PLANNING APPLICATION (REFERENCE K/2008/0970/O) FOR A NEW  
SECONDARY SCHOOL AT DEAN MAGUIRC COLLEGE, 26 TERMON ROAD,  
CARRICKMORE, OMAGH WITH A RECOMEENDATION FOR APPROVAL TO  
OMAGH DISTRICT COUNCIL PLANNING COMMITTEE**

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**TREACY J**

**Introduction**

[1] This is a challenge by Sandale Developments Ltd to a decision of the Department of the Environment for Northern Ireland ("the Department") to present outline planning permission with a recommendation for approval to Omagh Council Planning Committee in respect of new school accommodation for 450 pupils with outdoor activity space and playing fields.

**Background**

[2] The planning applicant was granted planning permission on 3 December 2008. That planning permission was quashed following a judicial review by the Applicants. The instant judicial Review arises in the context of the re-determination of that 2008 application.

[3] It was decided that the development proposal was regulated by the Planning (Environmental Impact Assessment (EIA)) Regulations 1999 (as amended) ("the EIA Regulations"). Under these regulations the Developers must submit an

Environmental Statement (ES) detailing various environmental features of the proposed development. A request for this was made of the Planning Applicants and was submitted on 18 August 2011.

[4] Following the submission of the ES the Department undertook a broad consultation process to assess the environmental impact of the proposed development. One issue that arose during this consultation process was the type and depth of planting around the perimeter of the site in order to ensure visual integration with its surroundings. This item became significant from at least 12 September 2011 when the Landscaping Architects Branch (LAB) made a consultation response with recommendations on this issue.

[5] On 8 December 2011 the Planning Applicant submitted an addendum to the ES which, in response to consultation responses, gave further detail of the perimeter planting. Consultation continued variously with LAB in relation to how the perimeter planting could achieve visual integration.

[6] On 21 February 2012 the Department made an Environmental Information Request ("FEI Request") under s15(2) of the Regulations. The request was for the provision of seven pieces of information. The item of relevance is item (v):

"Landscaping should be established to the external boundaries of the site to the north and east. We advise that these belts of woodland should be a minimum of 8m width. I discussed this issue with Landscape Architects Branch who state that you should not show standard tree planting but a woodland belt which should incorporate whips of mixed species and shrubs grown 1 metre apart as these grow much quicker and provide a visual screen much quicker. A landscaping proposal legend should be provided to supplement the block plan".

[7] In response to the FEI request a further addendum was submitted on 16 April 2012. Consultation continued.

[8] On 3 May 2012 LAB recommended that a condition of any planning permission that may be granted should be the submission of a detailed landscape plan for approval.

[9] On either 26 or 28 July 2012 a further revised design proposal was submitted in line with LABs recommendations. The Department decided to present the planning application for approval before Omagh District Council Planning committee, which was scheduled to occur on 2 July 2012.

[10] The applicant's solicitors wrote to the respondent on 20 June 2012 seeking confirmation that the planning application was deemed refused on the basis of their contention that the addendum submitted on 16 April 2012 did not fulfil the FEI request and that therefore the planning applicant had fallen foul of s15(2A) of the Regulations and the application should be deemed refused accordingly. No response was received.

[11] A pre-action protocol letter was sent from the applicant's solicitors to the respondent on 25 June 2012.

[12] On 29 June 2012 the Departmental Solicitors Office ("the DSO") gave a preliminary response stating that the planning application would not go before the council on 2 July, but that this was due to 'unrelated matters'.

[13] Over the course of correspondence the respondent refused to confirm that the application was deemed refused.

[14] On 11 August 2012 the respondent advertised the addendum of 28 July 2012.

## **Grounds**

[15] Relief against the impugned decision is sought on the basis that the respondent's decision of 5 July 2012 that the Planning Application did not lawfully require to be refused is contrary to Reg15(2A) of the Planning (Environment Impact Assessment) Regulations (NI) 1999 (as amended) and is irrational and/or unlawful and/or unreasonable.

## **Statutory Framework**

[16] The relevant sections of the EIA Regulations provide:

"15(1) Where the Department or the Commission is of the opinion that -

- (a) The Applicant could have provided further information about any of the matters mentioned in Schedule 4; and
- (b) That further information is reasonably required to give proper consideration to the likely environmental effects of the proposed development,

It may request the Applicant, by notice in writing to submit such further information

(2) The Department or the Commission may, by notice in writing, require an Applicant to produce such evidence as it may reasonably call for to verify any information in his Environmental Statement.

(2A) On receipt of a request under paras (1) and (2) the Applicant shall submit the further information or evidence within 3 months from the date of the request or such extended period as may be agreed in writing between the Applicant and the Department, and if not so submitted the Application shall be deemed to be refused and the deemed refusal shall not give rise to an appeal to the Commission by virtue of an Article 32 (appeals) or Article 33 (Appeal in default of a planning decision).

[17] Article 5 of the EIA Directive provides:

“..... Member States shall adopt the necessary measures to ensure that the developer supplies in an appropriate form the information specified in Annex III inasmuch as:

(a) the Member States consider that the information is relevant to a given stage of the consent procedure and to the specific characteristics of a particular project or type of project and of the environmental features likely to be affected;

(b) the Member States consider that a developer may reasonably be required to compile this information having regard inter alia to current knowledge and methods of assessment.’

## **Arguments**

[18] The applicant argues that the response received on 16 April 2012 to the FEI request did not fulfil that request. It therefore argues that there was no adequate response to the FEI request within the statutory timeframe and that this should result in the application being deemed refused on a literal interpretation of the statute.

[19] The respondent argues that the response of the 16 April did fulfil the FEI request and was therefore within the time limit. It argues that the purpose of s15 of the EIA Regulations is not to prescribe exact design details but to give the

department enough information to make an assessment. The results of the assessment would then be considered when determining the application on its merits. It notes that it was the Department that framed the FEI request and it should be the Department that decides if that request has been satisfied.

## **Discussion**

[20] The only question which calls to be determined in this application is whether or not the submission of 16 April 2012 satisfied the FEI request. If it did, it was within the statutory time frame and may not be impugned. If it did not, there was no satisfactory response within the time frame and the application must be 'deemed to be refused'.

[21] I would note first that the s15(2A) FEI request is part of a broader consultation and information-gathering scheme in order to fulfil its obligation to perform an environmental assessment.

[22] The planning applicant was clearly involved in this consultation process as on 8 December 2011 it submitted a first addendum to its planning application. This was not in response to a FEI request but in response to the consultation response from LAB.

[23] The relevant part of the FEI request reads:

"Landscaping should be established to the external boundaries of the site to the north and east. We advise that these belts of woodland should be a minimum of 8m width. I discussed this issue with Landscape Architects Branch who state that you should not show standard tree planting but a woodland belt which should incorporate whips of mixed species and shrubs grown 1 metre apart as these grow much quicker and provide a visual screen much quicker. A landscaping proposal legend should be provided to supplement the block plan".

[24] While there is a lot in that paragraph, the only parts of the paragraph which could be construed as a *request for information* are 'A landscaping proposal legend should be provided to supplement the block plan' and, arguably, 'you should not show standard tree planting ... [but you should show]... a woodland belt which should incorporate whips of mixed species and shrubs grown 1m apart.'

[25] There are 2 strands of Para (v) of the FEI request as reproduced above. Part of it clearly refers to the ongoing consultative process ie what it is suggested would be acceptable or desirable based on the input of all stakeholders, and one which relates

to the actual item of environmental information which must be submitted in response to the statutory request.

[26] On 16 April 2012 the school submitted a further addendum containing a revised landscaping plan showing an 8m belt (with some minor indentations) of woodland incorporating whips of mixed species grown 1m apart with a legend supplementing the block plan.

[27] It seems to me beyond doubt that the FEI request was fully complied with on 16 April 2012. Therefore it is within the time limit and not deemed refused.

[28] The further addendum of 26/28 July 2012 seems to have been a response to LABS recommendations of 3 May 2012, in particular their recommendation that a condition precedent of planning being granted should be the submission of a detailed landscape plan.

[29] Further, I would concur with the view expounded by Sullivan J in R (Milne) v Rochdale Metropolitan (BC) [2001] ENV LR 22 that:

“It is for the local planning authority to decide whether it has sufficient information in respect of the material considerations. Its decision is subject to review by the courts but the courts will defer to the local planning authority judgement in that matter in all but the most extreme cases.”

## **Conclusion**

[30] For these reasons I would dismiss the application.