



An  
Bord  
Pleanála

## Inspector's Report ABP-306974-20.

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<b>Development</b>	Slipway and turning area on foreshore of Lough Allen.
<b>Location</b>	Spencer Harbour, Derrynahinch, Co. Leitrim.
<b>Planning Authority</b>	Leitrim County Council
<b>Planning Authority Reg. Ref.</b>	195.
<b>Applicant</b>	Waterways Ireland
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant with conditions.
<b>Type of Appeal</b>	Third Party
<b>Appellant</b>	Joachim Schaefer Saskia de Jong.
<b>Observer(s)</b>	Peter Sweetman & Associates John Matthews
<b>Date of Site Inspection</b>	14 <sup>th</sup> June 2020
<b>Inspector</b>	Philip Davis.

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## 1.0 Introduction

This appeal is by a number of local residents against the decision of the planning authority to grant permission for the development of a small boat slipway and ancillary works within a small existing harbour on Lough Allen in County Leitrim. The application is by Waterways Ireland, part of proposals to improve the recreational facilities in the Lake area. The grounds of appeal relate to the impact on amenities and on local ecology.

## 2.0 Site Location and Description

### 2.1. Spencer Harbour, Lough Allen

This small harbour is located on Lough Allen, the uppermost Lake on the Shannon River. The Lake is navigable for leisure boats – accessed via a canal on the Shannon Navigation to the south. It is the northernmost part of the Shannon Navigation and Spencer Harbour is the northernmost anchorage (of three) on the lake. Lough Allen is also connected to the Erne Waterway via the canal system to the south.

Spencer Harbour is a within a shallow natural bay on the north-west side of the Lake. It has its origin in a 19<sup>th</sup> Century brickworks, the remains of which are still visible nearby. The harbour was apparently named after a boat, the Lady Spencer, which was wrecked nearby. The brickworks supplied clayware and firebricks from the Lough Allen Clay Company along the Shannon Navigation canal network for several decades of the later 19<sup>th</sup> Century and may have been associated with nearby coal mines. The existing harbour consists of modern breakwaters and floating mooring marinas, although older remains including timber structures which were probably piers for the clay works are visible on the north side of the natural harbour. There is a carpark with leisure area beside the harbour. There are no services or active buildings – the carpark is connected to the main road (R280), via a narrow lane. The overall area is wooded with mostly naturally regenerating deciduous forest. There is an entirely wooded small island (Corry Island), just off the lakeshore, providing some natural wind and wavebreak for the harbour. The nearest settlement is the village of Drumkeeran, about 5km to the north.

## 2.2. The appeal site.

The appeal site, with a site area given as 0.2 hectares, is an irregularly shaped section of shoreline within Spencer Harbour, including a section of access road leading to the existing pier, along with a section of the shoreline and lake just south of this pier. The access track leads from the leisure carpark for the Harbour and is roughly surfaced. The area of shoreline is shallow and appears to be at least partly artificial, with an abandoned track along the shoreline leading to a stone breakwater.

## 3.0 Proposed Development

3.1. The proposed development consists of the following:

**The construction of a new small boat slipway and turning area on the foreshore of Lough Allen at an existing amenity site at Spencer Harbour.**

## 4.0 Planning Authority Decision

### 4.1. Decision

The planning authority decided to grant permission subject to four conditions. Condition 2 requested a full underwater archaeological assessment. Condition 3 restricts the use of fill (no dredging material). Condition 4 states that Inland Fisheries Ireland should be consulted 4 weeks in advance of any development.

### 4.2. Planning Authority Reports

#### 4.2.1. Planning Reports

First report:

- The NIS is accepted, and it was concluded that no SAC's would be likely to be affected.
- Notes a previous application withdrawn.
- Outlines CDP policy on Inland Waterways, including Policy 110.
- Section 34(13) of the Act is noted with regard to objections such that the applicant does not have standing to make the application.

- Seven issues are outlined for additional information.

Second report (following the submission of further information and revised public notices)

- The second report included a screening assessment and addressed the AA. It accepted the conclusion that there were no adverse effects.
- A number of submissions are outlined, mostly objections relating to impacts on amenity, habitats, and the water quality of the lake.
- It is concluded that the applicant had addressed all planning concerns in the response and a grant of permission was recommended.

#### 4.2.2. Other Technical Reports

The Access Officer and District Engineer had no objections.

#### 4.3. **Prescribed Bodies**

None on file – second planners report summarises responses.

#### 4.4. **Third Party Observations**

A number of third-party observations were made, highlighting issues relating to the Habitats Directive, the archaeological importance of the harbour, and water quality issues, as well as general amenities.

### 5.0 **Planning History**

There is reference on file to one previous application for a slipway in Spencer Harbour – (P.17.139). This was withdrawn. There are no records on file regarding the existing pier and carpark.

## 6.0 Policy Context

### 6.1. Development Plan

The site is unzoned countryside. The Leitrim County Development Plan 2015-2021 has a number of relevant policies to developments on the inland waterways, set out in paragraph 4.10.4 and Policy 110.

### 6.2. Natural Heritage Designations

Lough Allen and related waterways do not have any EU or national designations. There is an upland bogland NHA to the west (Corry Mountain Bog), and two upland SAC's in the mountains surrounding Lough Allen – Boleybrack Mountain SAC (002032) and Cuilcagh – Anierin Uplands SAC 000584. The closest freshwater SAC is Lough Forbes Complex SAC, site code 001818, approximately 50km downstream.

## 7.0 The Appeal

### 7.1. Grounds of Appeal

Saskia de Jong of Drumkeeran, County Leitrim.

- Refers to all previous submissions by her and other objectors.
- Argues that it will destroy the intrinsic value of Lough Allen, with particular regard to its water quality status.

Joachim Scafer of Lecarrow, Spencer Harbour.

- It is argued that there has been incremental impact on the environment of Lough Allen and the proposed development represents project splitting.
- It is submitted that the further information submitted to the planning authority did not address the key issues.
- It is denied that the proposed development is of a 'relatively limited scale' as indicated in the submission documents. It is argued that it will lead to an incremental increase in loss of shoreline and increasing traffic.
- It is submitted that the site notices were incorrectly sited.

## 7.2. Planning Authority Response

- With regards to arguments on the ownership of the site, the Board is referred to Section 34(13) of the Act.
- It is noted that the permission includes a condition relating to mitigation for birds on the site – it is submitted that this adequately addresses any potential impact on Annex II species.
- The planning authority are satisfied that the boat slipway is a justified use in the context of the overall Lake.
- It is considered that the extent of works, including the removal of c. 200 cubic metres of dredged material would not have a significant impact on the local road network.
- It is considered that the conditions set by the planning authority address any potential impact on water resources.
- With regard to the submission by Mr. Schaefer, it is considered that the site notice and all other procedures were in accordance with the regulations.

## 7.3. Observations

### John Matthews of Drumkeerin

- Argues against the proposal for a number of reasons, and notes concerns about the planning authority not addressing habitat loss.
- It is argued that Lough Allen has limited shallows for submerged and emergent aquatic vegetation and the loss would be significant.
- It is submitted that the associated dredging would be damaging to the lake.
- The issue of the disposal of dredged material is raised and the absence of information on where it will be disposed of.
- It is argued that the site is unsuitable for this type of use – it is argued that there are a number of alternative slips along the lake which are underused.

- It is submitted that a number of detailed issues have not been dealt with including climate change, light pollution, associated litter and herbicide use, in addition to general degradation of the water body.
- Concerns are outlined about trees in the vicinity and bad habitat, and the potential for birds listed in the Habitats Directive to be affected.

#### Peter Sweetman & Associates

- It is noted that the linear habitat features at Spencer Harbour are important for foraging and commuting bats.
- It is submitted that the planners AA fails to mention bats.
- Notes that the planning authority did not make reference to Annex II 12(c) of Directive 2014/52/EU - it is submitted that the proposed development is a marina and so should have been assessed as such.
- It is argued that AA should have included the disposal of dredged materials.

### **7.4. Further Responses**

#### Saskia de Jong

- Raised concerns about the lack of a full in-combination effects assessment.
- It is argued that the site notice for the FI is incorrect as it did not include the date.
- It is argued that all the information submitted was not available in the correct time scale on the planning authority's website.
- It is argued that the environmental impacts of dredging and the importation of stone has not been addressed.
- It is restated that it represents an unsustainable form of development.

#### Joachim Schaefer

- It is submitted that the application should be declared void as the submitted information documents are inadequate and not in accordance with regulatory requirements.

## 8.0 Assessment

Having inspected the site and reviewed the file documents, I consider that the appeal can be addressed under the following headings:

- Preliminary/legal issues
- Principle of development
- Ecological issues
- Conservation issues
- Water quality and pollution
- Traffic/roads
- Appropriate Assessment

### 8.1. Preliminary/legal issues

The appellants and observers have raised concerns about site notices and other details about the processing of the application by the planning authority. I would note that all the parties had their opportunity to submit observations and there is no evidence on file that any members of the public were misled as to the nature or any other aspect of the proposed development. As I will be addressing this appeal *de novo*, and all parties have had their opportunity to make submissions on the full documentation, I do not recommend that the Board dismiss the appeal for this reason.

I note the issue raised about the standing of Waterways Ireland to make the application. I concur with the planning authority that having regard to Section 34(13) of the Act, this is not an impediment to deciding on the application or appeal.

Peter Sweetman & Associates have raised the issue of the nature of the proposed development with regard to the EIAR Regulations. Schedule 5, Part 2 of the 2001 Regulations, as amended, includes 12 (b) : '*Sea water marinas where the number of berths would exceed 300 and fresh water marinas where the number of berths would exceed 100*'. The proposed development is clearly well under this definition. While I would acknowledge the sensitivity of this very attractive lakeshore site, I note that it is not within or close to, a designated habitat or any particularly sensitive locations, it is within an existing small (and historically long established) inland harbour, and is

very small in scale with regard to the type of project listed within Schedule 5. I am therefore satisfied that there is no real likelihood of significant effects on the environment and the planning authority were correct to screen it out on preliminary examination and that a screening determination is not required.

## 8.2. Principle of development

The site is unzoned in the Leitrim County Development Plan, 2015-2021. The most relevant specific policy is Policy 110: *'It is the policy of the Council to promote and protect managed public access to the County's rivers and lakes and to ensure appropriate environmental safeguards are put in place in the provision of such accessibility.'*

The site is within a relatively unspoilt and very attractive area of northwest Lough Allen and is some distance from any settlements or tourist/recreation facilities. It is within a natural protected bay of the Lake, protected from easterly winds by an off-shore island. The site currently has a small carpark and picnic facilities, in addition to a small floating pier, but no ancillary features for larger pleasure boats. The harbour was once much busier, older OS plans indicate that there was a mid-19<sup>th</sup> Century corn mill on the site, and in the later 19<sup>th</sup> and early 20<sup>th</sup> century there was what appears to have been a pottery kiln (chimney pipes, flower pots and other pottery) facility utilising local red clays and possibly Arigna coal. In addition, there were with two associated piers and a breakwater, in addition to a post office. It was part of the overall Shannon Navigation and the manufacturing facility would have served a wide inland area of the Shannon and associated canals up to the early 20<sup>th</sup> Century. It appears to have been abandoned by the 1930's. The chimney stack is still intact, with some vertical timbers visible indicating the site of the two small piers indicated in the Cassini 6 inch map.

The existing harbour seems to be only used for small pleasure vessels and does not have the full range of facilities for larger cabin cruisers. As such, I am satisfied that the proposed slipway is modest in nature and does not imply an incremental increase in the scale of the proposed facility to one that would have a material impact on the wider area. As such, I do not consider that national or regional policy is relevant, except insofar as it is generally policy to improve recreational facilities in such areas where it does not impede on other policy or regulatory objectives.

Having regard to the nature of the proposed development and small scale, I would consider that it is generally in line with CDP policy objectives and should be considered on its own planning merits.

### 8.3. Ecological issues

Lough Allen is not a designated SAC or SPA or pNHA, but clearly is an important waterbody and has significant habitat value. While it does not meet the criteria for designation under the Habitats Directive, it seems clear that a number of bird and bat species listed under Annex II of the Directive use the lake, in addition possibly to other species such as otter. The site is within the existing harbour, although part of a generally undisturbed area where there has been little disturbance since the Harbour ceased its commercial use. The vegetation at the lake edge that would be removed for the slipway could be considered semi-natural as it seems to be made up of infill, probably dating from the construction of the breakwater to the south. There are regenerating ash and willow woodlands up to within a few metres of the lake shore.

I will address the impacts in more detail in the Appropriate Assessment section below, but I would generally note that any such development has the potential to impact on wildlife, in particular those species associated with water edges, whether in the woods or shallow water vegetation, or water birds. But having regard to the small scale of the works and its location within an existing harbour, I would consider the impact of habitat loss to be minor in nature and can be mitigated by way of condition.

The proposal includes the removal of dredged material, to be disposed of in a suitably licensed site. There is no evidence that this material is contaminated, but as the harbour had a previous commercial use, this cannot be ruled out. But I am satisfied that subject to normal best practice, the dredging and extraction works would only have a localised and small scale impact. Likewise, the importation of material for the slip would have just a short term and localised impact.

The overall proposal is likely to result in increased use of the facility. But given its nature and scale, this is likely to be very much a local facility and used only by small boats. I would consider this proposed development to be facilitating an existing

demand, and is not likely to generate additional use of this harbour that would have the potential for a material impact on the overall water environment of Lough Allen.

#### **8.4. Conservation issues**

As noted in section 8.2 above, the site has considerable historic interest and appears to have been an important component of what was once a thriving clay industry in this part of Leitrim. Use of the Harbour may well have predated the clay ovens as a small corn mill is indicated on the oldest OS maps. Given the physical advantages of the natural bay, it would seem possible that the use of this harbour pre-dates the 19<sup>th</sup> Century. The works would not impact on the visible remains of the older harbour (the visible timber remains of two piers and another, apparently later, breakwater), but it is possible that there could be archaeological remains on the site, although I note that older remains were probably disturbed or destroyed during the Harbours commercial heyday. But on a precautionary basis I would concur with the decision of the planning authority to include an archaeological monitoring condition on any grant of permission.

#### **8.5. Water quality and pollution**

The construction works has the potential to cause localised water pollution, in particular during dredging. As noted above, I consider that any such impacts would be localised and short term in nature. I would recommend a condition relating to construction management to ensure that these are minimised.

The operation of the slip may lead to localised increased recreational use of the harbour. But as I have discussed above, I do not consider that this would be of a scale or nature to be material with regard to long term impacts on water quality.

#### **8.6. Traffic/roads**

The appellants have raised concerns about the impacts on the access road and the local road network. The site is accessed off the R280 by way of a roughly paved track which is narrow and has a generally poor alignment. This leads to the existing carpark and small floating pier. This road does not serve any dwellings or farms and seems to have been associated with the former house and kiln on the site.

The works would involve the removal of some 200 cubic metres of dredged material, in addition to the importation of material for the slip. I would consider that this is well within the capacity of the track and adjoining road and I would concur with the planning authority that this would not impact on the quality or structure of the road or constitute a hazard.

## **8.7. Appropriate Assessment**

### **8.7.1. Screening (stage I)**

The applicants submitted a Natura Impact Statement on foot of an earlier screening (attached in Appendix I of that document). While the screening had identified no source-pathway-receptor linkages to any European sites within 15 km of the site, the precautionary principle was applied as it was considered not possible to rule out with certainty the potential for likely significant effects on the Lough Forbes Complex SAC (001818), which lies c. 54 km downstream of the site.

I note that there are there are two upland SAC's within 15 km of the site - Boleybrack Mountain SAC (002032) and Cuilcagh – Anierin Uplands SAC 000584. The conservation objectives of these sites relate to upland bog and heath species and there are no source-pathway-receptor linkages. I concur therefore with the conclusion of the screening carried out by the applicant and planning authority that the only possible significant effect would be on downstream freshwater SAC's, notwithstanding their significant distance to the south of the lake. I concur that notwithstanding the significant attenuation between the site and the designated wetland habitat, having regard to the precautionary principle, a full assessment of potential impacts on this SAC is required.

### **8.7.2. Appropriate assessment (Stage II)**

The closest Natura 2000 habitats are two upland SAC's within 10km (east and north), which were screened out in the initial application. These two sites are not in hydraulic continuity and none of the qualifying interests relate to a wetland/lake shore habitat, so I concur with that conclusion, and that the only possible habitat that could be affected is the nearest downstream freshwater habitat, the Lough Forbes

Complex – this is the northernmost of the designated habitats along the Shannon catchment. The qualifying interests are as follows:

- Natural eutrophic lakes with *Magnopotamion* or *Hydrocharition* - type vegetation
- Active raised bogs
- Degraded raised bogs still capable of natural regeneration
- Depressions on peat substrates of the *Rhynchosporion*
- Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior*

Of these, the NIS identifies the first, natural eutrophic lakes, as the qualifying interest that could potentially be affected, by way of water quality impacts. I concur with this conclusion as the small scale and nature of the development is such that there is no obvious pathway-receptor to the bogs/peat or forests associated with Lough Forbes, which is more than 50km downstream.

The conservation objective for the eutrophic lakes is as follows:

To restore the favourable conservation condition of Natural eutrophic lakes with *Magnopotamion* or *Hydrocharition*-type vegetation in Lough Forbes Complex SAC.

The NIS identifies pollution related to the works has having a possible significant effect that cannot be ruled out at screening stage. I would concur that this is the only direct impact that could potentially have an effect. But having regard to the small scale of the proposed development and the extensive attenuation between the site and the downstream habitat, I am satisfied that with the standard protection measures set out in the application documentation, no significant effect will occur. The site is along a wooded, sheltered lakeshore, and as such is likely bat foraging habitat – all Irish species of bats are Annex II species, although none are identified in the conservation objectives of the aforementioned SAC's. There are a number of old trees in addition to ruined buildings in the area that would have potential as bat

roosts, but none within the immediate vicinity of the boat slip area. I am satisfied that given that the site is within an existing harbour, and having regard to the small scale of the works, that any impact on bats would be insignificant and confined to the construction stage.

One appellant raised concerns that the NIS did not address the dredging of material and this materials removal to a suitably licensed disposal site. This material is likely to be natural sediments, although given the historic use of the site it is possible that there may be some contamination resulting from the use of the lands for brick and tile manufacture. I am satisfied that the NIS had full account of the direct works proposed. The disposal of that material would be subject to license and would be within a facility with its own consents which would have itself been subject to the full range of statutory requirements. The quantum of material is very small in relation to the overall waste disposal needs of the region, so I do not consider that the NIS is deficient in not having regard to this issue.

I note the concerns set out by the appellants on the potential for in-combination and cumulative impacts in Lough Allen impacting on downstream designated habitats and species within Lough Allen that are in Annex II of the Habitats Directive, but as the proposed development is within a previously developed small harbour with a long history of use, and is facilitating local recreation as opposed to generating additional use, I am satisfied that its construction would not adversely impact by way of indirect, cumulative, or in-combination impacts.

I therefore concur with the conclusion of the applicants and the planning authority. I find it reasonable to conclude on the basis of the information on the file, which I consider adequate in order to carry out a Stage 2 Appropriate Assessment, that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the European site No 001818, or any other European site, in view of the site's Conservation Objectives.

## **8.8. Other planning issues**

The appellants have raised concerns about the incremental and cumulative impacts represented by the proposed development on water quality and the overall sustainability and environmental amenities of the area. I would agree that there is a significant issue in Lough Allen with the potential for multiple minor developments,

cumulatively degrading the overall environmental quality of this very beautiful and relatively unspoilt area. Notwithstanding this I am satisfied that the proposed works represent a qualitative improvement to an existing amenity and will serve a useful purpose for recreation without resulting in excess damage or representing a precedent for other such developments.

I do not consider that there are other significant planning issues raised in this appeal.

The planning authority set conditions relating to the management of construction and archaeological monitoring – I recommend that these are broadly followed. The proposed development is not subject to a development contribution. I do not consider that any conditions beyond this are necessary.

## **9.0 Recommendation**

I recommend that the proposed development be granted planning permission for the following reasons and considerations, subject to the conditions set out below.

## **10.0 Reasons and Considerations**

Having regard to:

- a) The policy objectives of the Leitrim County Development Plan 2015-2021.
- b) The location of the proposed development within an existing leisure harbour with a long history of use, including commercial uses.
- c) The relatively limited scale of the works

It is considered that the proposed development, subject to the conditions set out below, would be appropriate in scale and nature, would not seriously impact on habitats or local amenities, would not cause traffic congestion or obstruction, would not be prejudicial to public health, and would otherwise be in accordance with the proper planning and sustainable development of the area.

## 11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason: In the interest of clarity.**

2. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall –
  - a) Notify the planning authority in writing at least four weeks prior to the commencement of any site operation relating to the proposed development,
  - b) Employ a suitably qualified archaeologist who shall monitor all site investigations and other excavation works, and
  - c) Provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.

**Reason:** In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.

3. Construction, demolition, and dredging waste shall be managed in accordance with a construction management plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall be prepared in

accordance with the 'Best Practice Guidelines on the Preparation of Waste Management Plans for Construction and demolition Projects', published by the Department of the Environment, Heritage and Local Government in July 2006. The plan shall include details of dredging materials, storage of this material, and the methods and locations to be employed for the recovery and disposal of this material in accordance with the provisions of the Waste Management Plan for the Region.

**Reason:** In the interest of sustainable waste management.

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Philip Davis  
Planning Inspector

3<sup>rd</sup> December 2020