

## An Bord Pleanála



### Inspector's Report

**Reference:** PL92.245587

**P.A. Reference:** 15/600595

**Title:** Use of field for both agriculture plus private grass runway 670 metres long and expand use of building for both agriculture and aircraft hanger.

**Location:** Crinagh and Capparoe, Nenagh, County Tipperary

**Applicant:** Tim & Pdraig Hanly

**Appellant:** Same.

**Observers:** Dawn & Michael Kenny, Maurice Leamy, Michael and & Fiona Leamy, Neil Booth & others, Michael Gleeson, Local Residents Group

**PA:** Tipperary County Council

**Type of Appeal:** First party against refusal

**Decision:** Permission refused

**Date of Site Visit:** 27<sup>th</sup> January 2016

**Inspector:** Philip Davis

## 1. Introduction

This appeal is by the applicants against the decision of the planning authority to refuse permission for the change of use of an agricultural field to a grassed runway with ancillary facilities. The planning authority refused for two reasons (including a material contravention) relating to policy relating to noise and amenity, and on safety issues.

## 2. Site Description

Photographs of the site and environs are attached in the appendix to this report.

### **Crinagh/Capparoo, Nenagh, County Tipperary**

The townlands of Crinagh and Capparoo are located within a wide, shallow and poorly drained syncline between the upland ranges of the Silvermines to the south and the Arra Mountains to the north, extending into the plains of north-west Tipperary and south Offaly. The area forms a natural route between Nenagh and Limerick, and both the M7 motorway, a mainline railway line (Ballybrophy to Limerick line), and other roads follow it in a roughly south-west to north-east direction. The syncline is between 3 and 4 km in width before meeting the moderately steep faces of the two upland areas. It is drained by the Kilmastulla River and its tributaries, which flow south-west and west before eventually draining into the River Shannon north of O'Briensbridge, just below Lough Derg.

The townlands are on lands which are generally flat, with a slight depression towards the base, which is characterised by boggy pasture, with a network of canalised watercourses and deep drainage ditches, including some apparently artificially raised land. It is between the R445 to the north (the former Limerick to Dublin Road) and the M7, with a railway line and third class road (L2141) running generally parallel to the R445 to the south. Another Regional road runs along the base of the Silvermines Mountains to the south. A number of minor third class roads link these major routes, although most roads are cul-de-sacs, terminating either at the railway or in farmland. The area is populated with a scattering of farms and small ribbons of housing development, mostly on the third class road network. Silvermines village is the closest settlement to the area, with Nenagh town about 8 km to the north-east.

### **The site and environs**

The appeal site, with a site area given as 7.35 hectares, is an irregularly shaped area of farmland (mostly grazing) at the lowest point of the valley, lying between the R445 and the railway line. The site largely consists of wet grazing land intersected by deep drainage ditches, with the Kilmastulla River running through the centre through a

canalised bed, with another channel, called the Black Trench Channel, running parallel to this. The lowest part of the site runs on a south-west to north-east axis, on slightly raised made ground. There is one small bridge over the river made up railway sleepers on two concrete abutments on the north-eastern side of the site. To the north, an extension of the site runs up slightly higher ground, to terminate at the end of a cul-de-sac road which runs north-west for just over 1 km before meeting the R445. South of the river is a large agricultural shed. The site is part of a larger landholding (some 33 hectares), which includes a triangular area of land extends on slightly rising ground to the south-east. A long track runs through this section, to a small yard with an old shed. The landholding includes a crossing of a live single track railway line leading to a field between the line and the L2141, and a smaller field the opposite side of the road. A track runs from the L2141, across the railway line at a gated crossing point. The site is mostly bounded with ditches and hedges.

**North** of the site, on slightly rising ground, is mostly farmland between the lands and the R445 and M7. There are some small areas of conifer plantation. A narrow substandard third class road (locally known as Dromin Lane) runs north, and there is a scattering of dwellings, some new, but also some apparently abandoned, along the road (this is the primary access to the appeal site). Dromin Lane terminates at an abandoned cottage and farmyard next to the appeal site. The closest inhabited dwelling is about 100 metres north-west of the site boundary.

**East** and **west** of the site are open areas of boggy grazing and farmland.

**South** and **south-west** of the site is farmland and conifer woodland, with a small number of farmyards connected to the main road to the south via crossings or, in one case, an underpass beneath the railway. The road runs around 2-300 metres parallel to the railway line. There is a cluster of about half a dozen houses at Erinagh, about 300 metres from the appeal site boundary. There are more dwellings randomly scattered along the road network. There is a large tailings pond associated with mining operations about 300 metres to the south-west of the site.

### 3. Proposal

The proposed development is described on the site notice as follows:

*Use of existing field for agriculture and private grass runway 670m long and provision of wind sock. Expanded use of existing agricultural building granted - 9/51/0476 for both agricultural and private light aircraft hangar usage. Construction*

*of gravel roadway from L90704 Dromin to existing agricultural building at Erinagh.*

#### **4. Technical Reports and other planning file correspondence**

##### Planning application

The planning application, (with plans and drawings and associated documents) was submitted to the planning authority on the 17<sup>th</sup> July 2015. Documents submitted include an AA stage 1 assessment with ecological report, a planning report, and a supporting letter with further details.

##### Internal and external reports and correspondence.

A significant number of letters (including petitions) from members of public and elected members were submitted, almost all objections. These raised a very wide range of issues, many relating to the past uses of the lands.

**Railway Safety Commission:** In a detailed letter concerns are expressed at the potential intensification of the use of the level crossing.

**Iarnód Eireann:** ‘Grave’ concerns expressed at the proposed development on the basis of possible increased use of the level crossing. It is also submitted that the application drawing is incorrect as it includes part of the Limerick to Nenagh railway line. The use of the level crossing for construction use or for emergency use is considered unacceptable.

**Habitats Directive Assessment Screening Report:** A Screening report carried out by the Council Ecologist on file concludes that a stage 2 AA is not required.

**Planners Report:** The report outlines the complex planning history of the site and notes a past enforcement action (now settled) relating to the site. It states that the District Engineer had no objection (no correspondence on file, apparently a verbal report). Environment Section requested further information. Relevant policies are outlined – the key policy that is not satisfied is indicated as ENV 36 on Environmental Nuisance – it is indicated that the applicant has not submitted sufficient information to demonstrate that it will not result in a noise nuisance. Refusal is recommended for two reasons.

#### **5. Decision**

The planning authority decided to refuse permission for two reasons I would summarise as follows:

1. It is considered that it is a material contravention of Policy ENV36 as the planning authority is not satisfied that it would not result in unacceptable levels of noise to nearby residential properties.
2. The planning authority is not satisfied that the proposed emergency procedures are capable of being implemented and so it would be prejudicial to public safety.

## 6. Planning Context

### Planning permissions – appeal site

There are two reference cases relating to the site – in June 2014 the Board decided that re-profiling of the lands and drainage works undertaken in 2000-2001 and 2008 is **exempted** development (**RL3110**), and in October 2014 decided that the diversion of the Blacktrench River and the filling of land between it and the Dromin River to form an airstrip is **development** and is **not exempted** development (**RL2335**).

The existing agricultural storage building with an underground effluent storage tank on the site was **granted** permission by the planning authority in August 2009 (**09/510476**) subject to standard conditions.

In 2014 the planning authority decided to **grant** permission for two bridge structures crossing the Black Trench River (**14/600246**) subject to standard conditions.

The planners report noted two applications in 2010 and 2011 for the retention of the use of the site as an airfield, both withdrawn.

In 2012 the High Court in **UD-07-144** in proceedings against the applicants, Sky Dive Ireland and others confirmed proceedings such that the use of the site as an airfield would cease, as should the use of the shed on the site for use as an aircraft hangar.

### Planning permissions – adjoining areas

None relevant on file.

### Development Plan

The site is in open countryside without any specific zoning designation. There are no specific policies in the Development Plan concerning small airfields. The planning authority in its report quotes a number of policies with regard to rural amenities and other related matters.

Relevant extracts from the North Tipperary County Development Plan 2010 and its 2016 Variation and other related documents are attached in the appendix to this report.

## 7. Grounds of Appeal

In a very detailed appeal, with a number of technical documents and supporting documents attached, the applicant has appealed the decision setting out a number of arguments I would summarise as follows:

- With regard to the ‘noise’ reason for appeal, the applicants submit a noise generation and impact analysis (Integrated Noise Model - INM) prepared by specialist aviation noise consultants.
- It is noted that the control of aircraft and aerodrome noise is regulated by the Irish Aviation Authority following international guidelines.
- It is argued that the noise from aircraft to be used (Cessna single engine light aircraft) are comparable to other noise sources in the area, such as the railway line and the M7 motorway, but only for short duration periods.
- It is submitted that the site, and the flight paths, are of sufficient distance from dwelling houses (the nearest being 475 metres from the airfield and 400 metres from the flight path) to ensure minimal impacts.
- It is noted there are no specifically sensitive receptors (such as hospitals or schools) in the vicinity.
- It is argued (referring to US military research) that there is no evidence that cattle are disturbed by aircraft noise.
- It is argued that modern aircraft are significantly less noisy than older designs.
- It is argued that the noise contours (details submitted) indicate that unacceptable levels of noise would be confined to the airfield and area of the applicants land ownership.
- It is stated that all access for all airfield purposes (including emergency access) will be via the Dromin Lane (L90704) to the north of the site. The level crossing access to the south will only be used for the applicant’s agricultural uses.
- It is argued that the layout and orientation of the site makes it ideal for safe airfield use. It is noted that such a small airfield will not require Public Safety Zones.
- A number of recent permission for airfields are noted, such as at Twomileborris (PL22.237958) and at Craughwell (PL07.231524). In PL07.238257 it is noted that the inspector in that appeal considered air traffic safety as falling outside of planning considerations.

An attached planning report emphasises that the proposal is for private use only, and is not to be used for skydiving as was the previous use. It is stated that 4 aircraft will be the maximum number – they will be

single engine Cessnas. Take-off will be primarily in a south-westerly direction, and use will be very low – from very occasionally in the winter up to perhaps 40 a week in summer. States that emergency access will be from either Dromin or Erinagh access points. A number of precedents are set out, including PL07.238257 (Dunmore, County Galway), and 07/1165 (Limetree, County Laois). It is noted that the required works to the site are very minimal as most of the required infrastructure is in place. It is noted that it is not a use that fits into the adopted Development Contribution Scheme, apart from the hanger which, it is argued, is Class 15 (amenity). It is emphasised that grassed airfields are common in rural areas and usually have minimal amenity implications.

An engineering and agriculture report indicates that the site is considered suitable with its existing agricultural use (silage cutting and light winter grazing). Site levels do not require alteration. The proposed roadway is of the order of 890 metres in length and 3 metres wide, and would require approximately 40 truckloads of imported material.

An Ecological Assessment (including AA Screening) indicates that the site is of low ecological value and would not impact on protected species. The possibility of bird strikes of hen harrier (the nearby Silvermines Mountains includes an SPA for the harrier) is explored. It is concluded that there would be no significant impact.

## **8. Planning Authority's Comments**

The planning authority has written to state that they do not have any further observations to make with regard to its decision.

## **9. Observers**

### *Dawn & Michael Kenny of Barbaha, Carrigatoher*

- It is claimed that the applicant has a history of unauthorised activities on the lands.
- It is claimed that the previous activities of the applicant and the skydiving operation caused serious amenity and safety problems for local residents, in particular for horse users.
- It is claimed that the use of the lands as an airfield will impact on local property values.

### *Michael Gleeson of Rossmine, Capparoe*

- Strong concerns are set out about the impact of noise pollution on local rural amenities and the impact on his elderly relatives.

- It is claimed that there were many ‘unsavoury’ flying practices associated with the previous unauthorised use.
- It is submitted that it will impact on local wildlife and the peaceful enjoyment of local residences of this rural area.

Neil Booth and others (22 signed residents of Dromin, Carrigatoher)

- The undersigned are stated to be all farmers and/or residents of Dromin Lane (L94454) and object strongly to the proposed development.
- It is argued that the previous unauthorised uses were disturbing and annoying – it is noted that the Planning Act allows for a refusal with regard to previous unauthorised activities (S.35(1) of the 2000 Act as amended).
- It is argued (photographs and drawings attached) that the Dromin Lane is substandard and unsuitable for further such use and that the proposed use would therefore constitute a hazard to public safety.

Maurice Leamy of Erinagh, Capparoe

- Concerns are expressed at the applicant's history of operating on the site without planning permission and the importation of material for land reclamation.
- It is stated that he has applied for permission for his son and daughter for dwellings on his lands and that the proposed development would seriously impact on the amenities of his and his families houses.
- It is questioned whether, given the applicants history, the proposed use could be limited to the small number of aircraft as proposed.

Michael and Fiona Leamy of Erinagh, Capparoe

- It is argued in considerable detail that the noise from the proposed airfield would have a serious impact on the amenities of the family.
- It is submitted that the Integrated Noise Model makes a number of unrealistic assumptions, including the technical performance of the aircraft used, flight path assumptions, the baseline flight information provided by the applicant, and baseline noise assumptions.
- Reference is made to a UK appeal (APP/A5270/C/12/2187592) with regard to the intrusiveness of noise. It is argued that the comparisons made by the applicant (tractor noise, etc.) are normal for rural areas, unlike aircraft noise.
- It is noted that some of the precedents quoted by the applicants were long established airstrips.
- It is argued that it would have a significant impact on the productivity of the adjoining dairy farm (the observers own



substantial areas of grazing land south and north-east of the appeal site).

- It is questioned whether the description of the proposed development as a 'private' airfield would allow its use to be restricted to the level outlined in the application documents.
- It is questioned whether the site can be used for agriculture (i.e. grazing) and also used for an airfield.
- The Board is requested to consider a ground for refusal under S.35(1) and (2) of the Act on the basis of the site history.
- It is questioned whether the submitted AA screening included for all potential issues, with reference to the use of the bridges over the river for fuel bowsers.

Local Residents Group – Erinagh (Maurice Leamy)

Observation submitted with similar arguments to Michael and Fiona Leamy above.

Railway Safety Commission (S.131 response)

- Concerns are expressed at the proposed intensification of use of the level crossing on the lands.
- The RSC concurs with reason 2 of the refusal issued by the planning authority with regard to safety.
- It is submitted that there are inconsistencies and omissions in the submissions with regards to safety procedures and question whether it is appropriate for the applicants to state, as they do in the appeal documentation, that all non-agricultural traffic will only use the alternative access (i.e. not the level crossing).
- It is noted that the applicants have a history of unauthorised uses of the site.

**10. Applicants response to RSC submission**

- It is noted that the RSC submission is in error in stating that 'Skydive Ireland' has any connection with the application – it is confirmed that this is not the case. The proposed development is for private flying for the Hanly's (the applicants) only.
- It is stated that there is no requirement whatever (for emergency use or any other use) for the level crossing to be used apart from existing agricultural use.
- It is denied that there is any safety issue with regard to the branch line.
- It is noted that many airfields, major and minor, operate through Ireland and Europe next to or close to railway lines.

- It is stated that required remedial work to the existing bridge and its handrails will be carried out prior to commencing any airfield-related use.
- It is noted that all safety operations on site will be in accordance with the licence issued by the Irish Aviation Authority – it is stated that it is normal for all primary safety equipment to be stored on the site itself.

## 11. Assessment

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

- **Material contravention**
- **Principle of development**
  - Development plan policy
  - Planning history
  - Pattern of development
- **Noise and amenity**
- **Access and safety**
  - Dromin Lane
  - Level Crossing
  - Conclusions
- **Appropriate Assessment**
- **EIA**
- **Other issues**

### Material Contravention

I note that the reason for refusal is stated to be a material contravention of Policy ENV36 of the Development Plan. In such circumstances, Section 37(2) of the 2000 Act as amended states that:

*(a) Subject to paragraph (b), the Board may in determining an appeal under this section decide to grant a permission even if the proposed development contravenes materially the development plan relating to the area of the planning authority to whose decision the appeal relates.*

*(b) Where a planning authority has decided to refuse permission on the grounds that a proposed development materially contravenes the development plan, the Board may only grant permission in accordance with paragraph (a) where it considers that—*

*(i) the proposed development is of strategic or national importance,*

*(ii) there are conflicting objectives in the development plan or the objectives are not clearly stated, insofar as the proposed development is concerned, or*

*(iii) permission for the proposed development should be granted having regard to regional planning guidelines for the area, guidelines under section 28, policy directives under section 29, the statutory obligations of any local authority in the area, and any relevant policy of the Government, the Minister or any Minister of the Government, or*

*(iv) permission for the proposed development should be granted having regard to the pattern of development, and permissions granted, in the area since the making of the development plan.*

*(c) Where the Board grants a permission in accordance with paragraph (b), the Board shall, in addition to the requirements of section 34(10), indicate in its decision the main reasons and considerations for contravening materially the development plan.*

While I will address the specific policy issues raised by the appeal further below, I would state with regard to (i) to (iv) above that:

- i. The proposed development is not of strategic or national importance.
- ii. I do not consider that there are any conflicting objectives in the development plan with regard to the stated reason for refusal, or that the policy objective is not clearly stated. However, in this regard I would note that the most recent variation to the North Tipperary Development Plan appears to have removed the policy objective quoted.
- iii. The reason for refusal appears broadly in line with regional and national guidance and other stated policies.
- iv. There do not appear to have been relevant permissions since the making of the development plan in 2009, nor are there particularly relevant issues with regard to the pattern of development in the area.

The Board may therefore conclude that pursuant to the provisions of section 37 (2)(b) of the Planning and Development Act, 2000, it is precluded from the granting of planning permission for the proposed development as none of the provisions of section 37 (2)(b) (i), (ii), (iii) or (iv) of the said Act apply in this case.

Notwithstanding this, as the quoted policy in the Development Plan is open to interpretation (as assessed in further detail in the relevant section of my report below), I would consider that it is open to the Board to grant permission – in this regard I would consider that it could be granted on the basis of conflicting objectives in the development plan with regard to promoting rural development (Policy objective ED9)

and the more recent variation to the Development Plan which has deleted the relevant policy objective, i.e. under 37(2)(b)(ii).

## **Principle of development**

### Development plan

The appeal site is in open countryside without any specific zoning or landscape designations. The Development Plan has no specific policies for airfields, although I note that in the zoning matrix aerodromes are indicated as 'not permitted' in areas zoned for agriculture (from the context, this seems to apply to agricultural areas surrounding those towns with Local Area Plans, not agricultural areas in general). There are no specific national or regional policies relevant to small private airfields. The Irish Aviation Authority (IAA) policy document '*Landuse Planning and Offshore Development*' (2014) has policies only in relation to applications for development around existing aerodromes, not proposals for new ones.

The planning authority quotes policy ENV 36: Environmental Nuisance in its reason for refusal:

*It is the policy of the Council to resist development that give rise to unacceptable levels of noise, smell, dust, fumes, light or noxious emissions affecting areas beyond the site boundary, or to air or water pollution. Such restrictions will particularly apply to uses sensitive to disturbances such as housing, schools and hospitals, etc.*

This policy was set out in the 2010 North Tipperary County Development Plan. The current plan is indicated as the North Tipperary County Development Plan 2010 (2016 variation). The quoted policy is not in the most up to date variation of this plan. The closest policy would seem to be Policy T113: Noise emissions:

*It is the policy of the Council to ensure that new development does not result in significant noise disturbance and to ensure that all new developments are designed and constructed to minimise noise disturbance in accordance with the Provisions of the Noise Action Plan 2013, the Development Management Standards set out in Chapter 10 and relevant standards and guidance that refer to noise management.*

The Noise Action Plan 2013 does not appear to be available on the Council website. The discussion in the Development Plan indicates that it focuses on the motorway corridors. Chapter 10.15 of the Development Standards on 'Noise' states that if there is a loss of amenity from a proposed development '*...a Noise Impact Assessment may be required. The Council may apply conditions at planning stage to manage noise emissions from new developments*'.

This implies that the current adopted Development Plan no longer has a presumption against developments that '*give rise to unacceptable levels of noise...*' but instead seeks for developments to be carried out in accordance with noise related standards and regulations.

It would therefore appear that while the planning application could have been regarded as a material contravention of the Development Plan as it applied at the time of the planning authority decision, this is no longer the case.

I would therefore conclude that there is no specific set of policy objectives against the proposed development within the development plan (notwithstanding the 'material contravention') and as such the proposed development should be assessed on its own planning merits.

#### Planning history

The site has a past history of unauthorised developments, most notably the unauthorised use as an airfield and sky diving centre. It is clear from the correspondence on file that this use caused considerable nuisance to local residents and farmers. As a number of observers have pointed out, the Board does have powers to refuse for reasons of past history alone (S.35(1) and (2) of the 2000 Act, as amended). I would comment that normally this would only be considered on the basis of repeated breaches, but the Board may consider that the specific nature of the unauthorised use, and the apparent lack of concern shown for the amenities of neighbours, may justify such a refusal.

It is argued by the applicants that the current proposal is for a materially different and significantly less impactful development than the one which caused such local controversy in the past. It is certainly true that a sky diving operation would involve a much high number of take-offs than a conventional small private airfield and would involve aircraft gaining height over the immediate area, emitting a constant level of noise. I would, however, be concerned that it would be difficult in reality to limit the number and extent of flights from an airfield once permitted, as operational matters primarily fall within the regulatory authority of the Irish Aviation Authority. It is not clear to me that conditions on types and numbers of aircraft which could operate from a permitted airfield would be enforceable. I would therefore conclude that the key planning decision is whether the site is suitable for a private airfield, with the issue of restrictions on the use of that airfield as a secondary consideration.

In this regard, I would note that in previous appeals with some similarities, PL07.238257 and PL07.231524, the Board placed quite restrictive conditions on the permissions, including in one case restricting the use of the permitted airfield to one specific aircraft (PL07.238257).

### Pattern of Development

The site is in an agricultural area with a scattered settlement pattern. There is a history of mining in the area with the abandoned pit of the Silvermines opencast pit at the edge of the Silvermines Mountains visible from the site, and with an associated large settlement pond nearby. There is no airstrip in the immediate area. According to the list of small airfields on the Irish Aviation Authority (IAA) website there are no licensed airstrips in Tipperary – other sources list two unlicensed airstrips – at Thurles and Killenaule, in addition to one at Moneygall in Offaly. In a wider area there are two licensed aerodromes in Offaly (Birr and Clonbulloge – the latter used for skydiving), and one at the edge of Limerick City used by a private aero club – Coonagh. The appeal site was apparently a licensed aerodrome with the IAA (notwithstanding the absence of a planning permission) up to its closure following enforcement action.

There does not appear to be any particular distributional pattern for aerodromes in Ireland, apart from being generally located within an hour's drive from a city or on islands – and most seem to have long established roots, having started as either military airstrips, as parts of clubs, ancillary to racecourses, or pre-dating the 1963 Act. Some are in relatively unpopulated areas - most, such as Coonagh, are close, sometimes very close to urban areas. There is no particular evidence to suggest that this part of Tipperary is lacking private airstrip infrastructure. I would comment that finding sufficiently flat open land in the region without nearby dwellings or farms would be very difficult, which perhaps explains the relatively small number of such facilities around the country.

The site as it is at present was clearly laid out as an airfield – the land has been raised on a roughly east-west axis between two parallel canalised watercourses. It is the lowest point in the local topography, at the base of the river valley. Much of the proposed airstrip is on what appears to be made ground. At the time of my site visit, following several days of quite heavy rain it was almost impassably muddy, and certainly unusable as a landing strip, so I would anticipate that it would not be useable for extended periods during the year, at least in the absence of further drainage or the settlement of the made ground. In other respects, the area is clear of obstacles – there are no overhead lines in the vicinity and relatively few tall mature trees along the base of the valley.

### **Noise and amenity**

The primary concern expressed in most of the observations relate to noise and disturbance from an airfield with its potential impact on both local dwellings and on dairy animals. The applicants have submitted a technical report indicating the take-off/landing zones and the noise parameters – this report is claimed to be in line with international guidance, although the observers have made a number of what I

consider to be reasonable comments as to the appropriateness of the chosen parameters for the study.

The closest dwellings are a large farmhouse just south-east of the end of the eastern end of the proposed airstrip, and a dwelling on a slight ridge overlooking the site to the north near the end of Dromin Lane. There is an abandoned traditional cottage at the very end of Dromin Lane, used for hay storage. There are significant numbers of dwellings along Dromin Lane, and a cluster of dwellings at Erinagh, next to the southern access to the site. The area on the western alignment of the airstrip is largely unpopulated, mostly due to the marshy ground and the Silvermines settlement ponds, but there are more farms and dwellings along the eastern alignment, some with private lanes accessing the road, and others on a minor road linking the R445 with the area south. There is at least one major dairying operation with grazing fields very close to either end of the runway.

My perception of noise in the area is that it is a very quiet rural area. Although there are two very busy roads – the M7 (elevated in sections) and the R445 within 2 km - neither were audible to any significant extent during my site visit (a largely windless afternoon). This is somewhat surprising as there are no noise reflective or absorptive barriers on either road on their elevated sections, but it may be that the subtle drop in topography and the heavy vegetation has reduced noise levels discernible from road traffic. As with any such rural area, you would expect occasional noise from agricultural activity. The railway is 'live', but it is not a high speed line and it appears to be used by just half a dozen passenger trains a day.

On the basis of the submitted information it would seem that it is theoretically possible to have an airstrip on the site operating in a manner which would not have a serious impact on dwellings or on agricultural activities. I note that in other appeals, the Board has restricted the use of private airfields to specific identified aircraft in order to ensure there is no unanticipated intensification. I would not consider that there is sufficient information on file to permit such a strict imposition of conditions, and having regard to the planning history, it is not clear that such conditions would be enforceable. In particular, I would have concerns that any variation from a simple pattern of take-off and landing from the airstrip would have significant impacts on a number of dwellings. I am therefore not satisfied that the airstrip could be operated in a manner which would keep noise impacts to within an acceptable level for this quiet rural area.

I would therefore recommend that, notwithstanding the change to the development plan policy quoted in the planning authority reason for refusal, the Board refuses for a similar amenity and noise related reason.

## **Access and safety**

There are just two possible accesses to the proposed airfield – the proposed route, via a bridge and a new/updated farm track to connect with Dromin Lane, which then runs north to the R445 - and via an existing relatively newly built farmtrack which runs directly south, crossing the railway line at a level crossing and then connecting with the third class road near Erinagh. It would appear that the latter is the primary access now used for the farming activities on the lands. Access to the site would be required for construction and general operations and there would also be a requirement for emergency access if the airfield was to be licensed by the IAA.

### *Dromin Lane*

This is a typical minor third class cul-de-sac road, with a gradual deterioration in quality from the road junction to its termination point. It has a reasonable junction with the R445 (in terms of sight lines), with most of the dwellings close to this junction. There is a scattering of dwellings further south, as the road goes through a number of sharp turns, gradually getting narrower with a gradually deteriorating surface. The last 250 metres or so is only roughly surfaced – this low grade section serves a pair of dwellings and a farm complex including a long disused cottage, and the access to the appeal site – at present this is a farm gate to a field with no discernible lane. The public highway close to the proposed entry point is very substandard – at the time of my site visit much of it was under water (the lowest level crosses a minor watercourse on a culvert at the base of a shallow valley) and probably only passable with a farm vehicle.

The proposed lane would run through what is now pasture, before crossing over on an existing crude bridge made of railway sleepers on concrete abutments. This access would be somewhat tortuous, but still suitable for agricultural vehicles, although cars may have difficulties in sections.

Dromin Lane does not appear to be heavily trafficked, but during my site visit I observed two heavy vehicles using it, apparently accessing another farmyard near the end of the lane and to the north.

I would consider this road to be unsuitable for any use beyond residential access and agricultural use. At a very low level of use, the airfield is unlikely to generate large amounts of traffic, especially if limited to private use only – I would certainly consider the access unsuitable for any type of commercial aerodrome. The tortuous and substandard nature of the surface would certainly be a difficulty for emergency vehicles requiring rapid and unimpeded access.

### *Level crossing*

The most direct access to the site from a public road is via the third class road at Erinagh. From a farm gate next to a dwelling, this runs



through a field on a gravel track. There is a level crossing of the railway at a gated access with stiles. This leads to a track running to a small yard with a few sheds and what seems to be an abandoned and unused fire truck. A direct farm track runs down the slope to the proposed light aircraft hangar. The latter track appears to have been built sometime between 2000 and 2005 according to aerial photography records.

This track is clearly the most direct and easy to use access to the site, and appears to be the main farm entrance, and also, from information on file, appears to have been the main access when the site was previously used as an aerodrome. The level crossing appears on older OS plans and seems to have been there from the construction of the railway in the 19<sup>th</sup> Century. There appear to be several such level crossings along this section of railway although at least one farm has the use of an underpass.

The railway line, on the Nenagh to Birdhill line, is single track and according to online timetables is used less than half a dozen times a day by local passenger trains (there is no information available on goods trains or expresses). It is indicated by Áarnod Eireann and the Railway Safety Commission that the level crossing is only considered appropriate for agricultural use by the landowner.

On the basis of submissions made, while this access is clearly the easiest to use, it appears that the applicant is legally restricted from using it for any non-agricultural, and in any event I would consider it unsafe for such use.

### Conclusions

The original application documents were ambiguous and contradictory regarding the use of the level crossing access, but in the appeal submission it is confirmed that the proposed airfield is to only be accessed and serviced from Dromin Lane to the north. The applicants also state that emergency access would only be from Dromin Lane, although realistically speaking in an emergency the relevant services will use whichever appears fastest and easiest, and this may well be the level crossing. The closest fire station is in Nenagh, and both routes seem equidistant.

While I would consider that in terms of vehicular volume alone a small private airfield would not provide unacceptable levels of traffic on the public highway, the particular need of an airfield, with specific regard to emergency access, requires a level of certainty that the access arrangements are entirely acceptable. I would conclude that there is an ambiguity and uncertainty about the situation with the airfield which is not acceptable – for this reason I concur with the general reason for refusal issued by the planning authority.

## **Appropriate Assessment**

The closest Natura 2000 sites are in the Silvermines Mountains – an SPA (site code 004165) designated for the protection of the hen harrier, and the West Silvermines SAC (site code 002258) – designated for its wet and dry upland heaths. The two rivers on the site drain to the Shannon, which includes a very extensive SAC (Lower Shannon – site code 002165) which has a wide number of riverine and estuarine habitats as qualifying interests.

The AA Screening submitted by the applicant is quite detailed and comprehensive. It notes the potential for disturbance of birds, including possibly the hen harrier, although it is several km from any part of the designated upland SPA. There is no evidence that the immediate area of the site is a nesting, roosting or foraging area for the hen harrier or its main prey species so I do not consider that there is any evidence that there could be a direct or indirect impact on the species. It is also noted that there were concerns expressed in the original consultation by the applicant with the NPWS about flights over the Lough Derg SPA (designated for birds including Tufted Duck, Goldeneye, Cormorant and others), but this does not seem to be significant – there are no indications that the proposed development would increase flights over the lake.

There is a significant separation distance between the site and the designated heaths of the Silvermines Mountains so I do not consider that there is any potential for impact.

The Lower Shannon SAC is a complex mosaic of habitats with scheduled species including a range of freshwater and migratory fish plus related species such as the otter, the freshwater pearl mussel, alluvial forests and meadows, etc. The lower reaches of the Kilmastulla River are part of the designated SAC, so there is a direct physical link between the site and designated habitats (although it appears not to have been considered in detail in the Screening as it is stated to be more than 10km from the site). Parts of the river are indicated from online sources to be a reasonable brown trout fishery. However, the section through the appeal site is canalised and appears of little habitat value – just downstream it runs through the settlement ponds for the Silvermines and as such cannot be considered an undisturbed or unpolluted river (there is a significant amount of information on the EPA website outlining various scientific studies into pollution from the main mine and associated spoil heaps/settlement ponds). These are not referred to in the Screening report submitted by the applicant and there is little information on the Council Ecologist's AA Screening Report attached with the planners report.

While I would acknowledge that the NPWS apparently did not highlight this issue when the applicant's ecological consultant requested information in the screening, I am concerned at the very sparse information available about the ecological status of the river and the

potential for impacts on the Lower Shannon SAC downstream. As one observer noted, an obvious potential for pollution is the towing of avgas bowsers over the bridge (although I would note of course that this would also occur for normal agricultural activities). I would also be concerned about fuel spillages during flood events or in the event of an accident. While I would consider that, having regard to the small scale nature of the proposed works and the already very disturbed and possibly polluted nature of the Kilmastulla River the potential for a significant impact on that part of the SAC within the lower reaches of the river is small, there is simply not enough information within the Screening to satisfy me that it is not potentially significant and as such a stage 2 AA may be required. It does not appear that the planning authority took account of the potential for spillage in their Screening (there is very little information on file), and the NPWS was apparently not consulted on the final Screening Report (Inland Fisheries Ireland were consulted but apparently did not respond).

I would therefore conclude that the Screening is not complete. As I will be recommending a refusal I do not consider that further action is required, but if the Board is minded to grant permission I would recommend that the NPWS be directly consulted as to potential impacts on the Lower Shannon SAC to identify if a stage 2 AA is required.

### **Environmental Impact Assessment**

The proposed development is below the threshold for an EIA as set out in Schedule 5 of the 2001 Regulations, as amended – the Schedule lists runways, but only if paved and in excess of 800 metres. I do not consider that there is likely to be a significant impact on the environment having regard to the Schedule 7 criteria in the 2001 Regulations as amended. I therefore conclude that EIA is not required.

### **Other issues**

I do not consider that there are any other significant planning issues arising. There are no indications of archaeological remains in the vicinity and there are no buildings on the NIAH locally. The site may be subject to flooding and poor drainage, but I do not consider that the proposed development would exacerbate flood risks downstream. While the airstrip would not be operational during a flood, I would consider this a matter for the applicant unless there was a potential for pollution.

## **12. Conclusions and Recommendations**

I conclude that notwithstanding the variation to the Development Plan, the general reasons given for refusal should stand. I conclude that the proposed development would, by reason of its location and the planning history would seriously injure the rural amenities of the area

by way of noise and disturbance, and that the issue of site access is ambiguous and may not be acceptable in terms of public safety.

I recommend therefore that planning permission be refused for the proposed use of the field as an airstrip and the change of use of the existing agricultural building for the reasons and considerations set out below.

## **REASONS AND CONSIDERATIONS**

1. Having regard to planning history of the site and to the location of the site within a rural area with a significant number of dwellings within a kilometre of the proposed runway, it is considered that the site is unsuitable for aviation use. The proposed development would, therefore, seriously injure the amenities of this rural area and thus be contrary to the proper planning and sustainable development of the area.
2. The Board is not satisfied, on the basis of submissions made with the application and appeal, and having regard to the restrictions on the level crossing to the south of the proposed runway, that the proposed airstrip can be accessed satisfactorily by road for operational and safety purposes. The proposed development would therefore be prejudicial to public safety.

---

**Philip Davis,**  
**Inspectorate.**  
**15<sup>th</sup> February 2016**