

An Bord Pleanála



Inspector's Report

PL 15.246093

DEVELOPMENT: -

Topsoil stripping and placement into perimeter berms with perimeter fencing. Stone surfacing for open storage of port cargoes such as reinforcing steel and mesh.

Planning Authority:

Louth County Council

Planning Authority Reg. No:

15/496

Applicant:

Greenore Port Ltd.

Application Type:

Permission

Planning Authority Decision:

Grant

Third Party Appellant

Greenore Residents and Tidy Towns Ltd.,
Cormac O' Donnchu &
Georgina Caraher,
Dylan Macavlay,
Noel & Doreen Symth.

First Party Appellant

Greenore Port Ltd.

Type of Appeal:

Third Party v Grant &
First Party –v- Condition

Observers:

None

Date of Site Inspection:

6 April 2016

INSPECTOR:

Patricia Calleary

1.0 INTRODUCTION

PL 15.246093 relates to **4 no. third party appeals** against a decision by Louth County Council to grant permission for topsoil stripping and placement into perimeter berms with perimeter fencing, also stone surfacing of an area of approximately 2.0 hectares for open storage of port cargoes such as reinforcing steel and mesh. It also relates to **a first party appeal** by the applicant against Condition No.10 attached to the decision to grant permission on the basis that the development contribution scheme is considered to have been incorrectly applied.

2.0 SITE LOCATION AND DESCRIPTION

The appeal site, with a stated area of c.2.0 Ha is located on lands north/north east of Panpak Ltd. in Greenore village which itself is located on the northern shore of the Cooley peninsula in Co. Louth. It comprises of an open field, which is relatively flat. It is bounded by a low timber rail fence along the R175 to the west, Carlingford shoreline to the east, an industrial building (Panpak Ltd) to the south/south west and private lands to the north. There are some new trees planted on a grassed strip of ground between the site and the R175 roadside. Current access to the site is from an existing private road connecting with the R175, which it is stated is in the ownership of Greenore Port Ltd. The access leads to a field, which connects onwards to the site across a right of way. At the access point onto the public road, R175, there is a footpath located on the west side of the road, which leads north to the village. The footpath also extends past the site and access road in the southern direction. Greenore village comprises of unique Victorian buildings including some redbrick terraces. Euston Street connects the village to the R175 and the R175 follows north as Shore road to Greenore port.

3.0 PROPOSED DEVELOPMENT

According to the drawings and documents submitted, the proposal would constitute the following:

- Topsoil stripping and placement into perimeter berms.
- Proposed new access laneway to be served from an existing right of way from the adjoining Harlon Transport site.
- New 2.45m high perimeter fencing (paladin type) on the northern and eastern boundaries of the site and on the inner/eastern side

of the proposed new laneway. [Note: The request for further information and the response refers to fencing on the eastern boundary only but I note the fence is shown on both the eastern and northern boundaries on the cross section drawing submitted with the application].

- Stone surfacing of an external area of approximately 2.0 hectares, which it is stated would be used for open storage of port cargoes such as reinforcing steel and mesh.
- It is stated on a supplementary planning application form that an estimated traffic volume of 120 trucks/day would be generated, shunting from port to storage area.

It is stated that more storage space is required to meet legislative changes for storage of steel. A graph of the weight of steel reinforcement handled at Greenore port from 2004 to current year is enclosed with the application.

4.0 PLANNING AUTHORITY'S DECISION

The Planning Authority issued a decision to **grant permission** subject to 10 conditions, the following of note:

- Condition 2: Restrict use to storage of steel unless otherwise agreed with the Planning Authority.
- Condition 3: Restrict height to 2.45m unless otherwise agreed with the Planning Authority.
- Condition 5: Landscaping to be undertaken in first planting season.
- Condition 8: Developer responsible for cost of road/footpath cleaning.
- Condition 10: - Development Contributions.

4.1 Planning report by Planning Authority

Following their initial assessment, further information was sought in respect of traffic, details of fencing, clarification of Appropriate Assessment and details of uses proposed on the site.

The following points are set out in the combined planner's reports.

- Site is designated as industrial/residential use under the Louth County Development Plan 2015-2021.
- No population allocation was provided for under the Core Strategy. Permission would not preclude any future residential development.
- Storage of other materials on site would need to be assessed on an individual basis or by way of a separate planning application.
- Infrastructure section were satisfied with traffic information and considered lands are not vulnerable to flooding.
- Storage of steel product should be restricted to a height of 2.45m.
- Appropriate Assessment screening considered acceptable by PA.
- No apparent geological features linked to the site.
- Calculations of development contributions provided.

A recommendation to **grant permission** issued.

Note: A record of pre-planning meetings were provided by the Planning Authority to the Board.

4.2 Submissions/Observations

13 no. third submissions were received by the Planning Authority. The following is a summary of the collective points raised:

- Development will have negative impact on Carlingford Lough SPA/SAC.
- Development is unsympathetic towards the ACA of Greenore.
- Items which will be stored could change over time.
- No details of lighting or security features.
- Gravel surface unsuitable.
- Proposal will negatively impact on tourism.
- Increase in HGV traffic entering and leaving the R175 will result.
- TIA required.
- No justification for the storage of steel has been provided.
- Highly visible on approach road and for the 4 houses opposite.
- Site is subject to flooding; requires a flood risk assessment.
- Loses the opportunity for residential development.
- Paladin fencing is unattractive and industrial in appearance.
- Contrary to policy and proper planning.
- AA screening is inadequate as it does not refer to grassland for the Brent Geese. A full NIS should be provided.
- National monument (LH 009-012) has not been considered.

- Yard proposed to be laid out in front of a protected structure.
- Right of way across land will be lost.
- Will pose unsightly entrance to village.
- Impact on residential amenity due to noise, dust and light pollution.
- Would restrict development of Greenore.
- Development description is vague and misleading with inclusion of "such as" for uses proposed.
- Will not provide employment for those in the surrounding area.
- Concerns raised re storage of rubbish on site.

4.3 Interdepartmental reports

- Environment - No report requested
- Heritage - No report received
- Infrastructure - No objection subject to conditions

4.4 Prescribed Bodies

- None referred

5.0 PLANNING HISTORY

- **PL15.243191 / 13/241** - Construction of ferry terminal facilities adjacent to Greenore Port.
- **PL15.239221/ 10/501** - Security fence around the perimeter of the port storage area at Greenore Port.
- **16/114 (Louth County Council)** – On 14 April 2016, Louth County Council issued a decision to **grant permission** for a similar development to that of this appeal on a site which is located south of the current appeal site. A copy of this decision is included with the appendix.

6.0 THIRD PARTY APPEALS

Third party appeals were lodged by 4 parties (Greenore Residents and Tidy Towns Ltd., Cormac O Donnchu & Georgina Caraher, Dylan Macavlay, Noel & Doreen Symth).

The main grounds of the collective appeals are summarised under as follows:

- Provides a summary of submissions made at planning application stage, background to the village and environment of Greenore, Greenore Residents and Tidy Towns (GRTT) and Greenore Port.
- Provides background to submission made during the making of the current Louth County Development Plan 2015-2021.
- Site more suitable to residential development and other more suitable lands available for proposed development adjacent to the site, which were recently zoned for industrial development under the Louth Development Plan 2015-2021.
- Development will constrain growth of Greenore village and community.
- Negative impact on residents, visitors and on visual amenity will result.
- Concerns raised re: impact of development on Carlingford Lough SAC, SPA and NHA; AA Screening insufficient; NIS required.
- Concerns raised re: impact of development on shellfish and foreshore as a Candidate site of Geological Interest (LH009-012).
- Insufficient information on purpose of application and details of cargos to be stored on site.
- Insufficient appraisal of application by Planning Authority.
- Impact on Built heritage, ACA, views and protected structures, i.e. 'The Bungalows' and 'The Coastguards' adjacent to the site.
- Comprehensive plan for the development of port not provided.
- Unacceptable increase in HGV traffic (188 movements in each direction), which would increase traffic hazard.
- Flood risk assessment required but not provided.
- Masterplan for port development should have been provided.
- Development would be detrimental to the development of tourism.
- Appeal site currently affords community a buffer between industrial development and village which would be lost if development goes ahead.
- Development would cause port-related activity to monopolise the village.
- Previous non-compliance issues raised.

7.0 RESPONSES TO THIRD PARTY APPEALS

Response by Second Party to Third Party Appeals

The following is a summary of the response to the third party appeals by the Planning Authority.

- Zoning allows for both industrial and residential development.
- No requirement for masterplan and no requirement for justification of need.
- Core Strategy does not allocate an allowance for Greenore but directs 18.6 Ha of land across all 23 Level 4 settlements including Greenore. Does not consider subject development would conflict with core strategy allocation.
- Issue of AA Screening was clarified by the applicant by way of significant further information. Planning Authority screened the proposed development and concluded that the effect on the Natura 2000 sites as not being significant.
- Site is located outside of ACA. Low visual impact will result because of height restriction of 2.45m for storage.
- PA satisfied that there are no outstanding issues with regard to planning compliance on recent development by Greenore Port.
- Development located within area zoned industrial/residential. Policy TC41 of the Louth County Development Plan 2015-2021 supports the expansion of Ports within County Louth.

Response by First Party to Third Party Appeals

A response to 3 of the third party appeals¹ was submitted by the first party. At the outset the first party set out that the main purpose of the additional storage area is for storage of steel materials/products. The principal points made in the response are listed under:

- Proposal is critically important for the development of Greenore Port and will have a positive economic impact on Greenore.
- Development will support port's continued operation and economic position.

¹ Responses were made to 3 no. third party appeals, i.e. Greenore Residents and Tidy Towns, Dylan Macaulay, Noel and Doreen Smyth.

- Both the 2009 County Development Plan (relevant at the time of lodging the application) and the current 2015 County Development Plan support the principle of the development.
- Applicant has also applied for permission on lands zoned 'industrial' on a site south of the appeal site.
- Greenore Port is the main source of employment within Greenore - 15 full time employees and 23 part time employees and has invested €1.7 million in an R&D facility, OpenHydro, who will have 100 people employed at Greenore Port.
- Greenore's industrial heritage is centred on the port, which was constructed in 1873 and has operated as a port since. Best way to maintain the heritage is to maintain the original use.
- No adverse impact on built / natural heritage of area will result.
- Previous mature screening along R175 was blown down in recent storms and new robust screening has been since established. Once planting matures, minimal visual impact will result.
- No flood risk issues on the site.
- Development will not in itself generate additional traffic as additional area is required to allow for more space in order to comply with legislative changes for storage of steel.
- TTA submitted concludes that there is significant spare capacity within the roads and junctions to cater for the development.
- Restates findings of AA Screening report - not likely to have any impact on status of Carlingford Lough SPA or on the conservation objectives of the site in relation to Brent geese or wetland habitats.
- No monuments exist on the site.

8.0 FURTHER RESPONSES (THIRD PARTY APPEALS)

Response by Third Parties to Second Party Response to Third Party Appeals

Responses which were received from 3 third parties, i.e. Noel & Doreen Smyth, Dylan Macaulay and Greenore Residents & Tidy Towns Ltd. which included the following points:

- Where there is a combined zoning (industrial and residential), proper planning requires residential to be located beside established residential and similar with industrial and development should be proportional in a combined zoning.

- Applicant has lodged a separate planning application to develop an adjacent site for open port storage. States that new site is more suitable than the appeal site.
- Masterplan should be prepared by large companies/entities.
- Site is not separated from ACA by a field to north.
- Condition to limit the height of the stored material to 2.45m would be very difficult to enforce.
- Development will have an adverse impact on adjoining residences including visual impact.
- No evidence to support that storage of steel will keep the village alive.
- Not considered good planning to allow development to proceed adjacent to established houses.
- No environmental report prepared by Louth County Council.

9.0 FIRST PARTY APPEAL

The first party have lodged an appeal against condition no. 10 on the basis that the development contribution scheme has not been properly applied.

The elements of the contribution attached under Condition No.10 is as follows:

- a. **Road Improvements = €1,332**
- b. **Surface Water drainage = €0,152**
- c. **Recreation and Amenity = €0,084**

The main grounds of the appeal are summarised as follows:

- PA incorrectly levied development contributions for 'water and surface water drainage', being services that have not been provided.
- Development will dispose of surface water on site and will not put additional demands on the Council's water and surface water drainage infrastructure.
- Water services provision is transferred to Irish Water and is no longer a function of Louth County Council and this element of the contribution should not have been applied.
- Contributions levied are not supported by the Councils Development Contribution Scheme.

- Contributions levied are contrary to DECLG's 'Development Contributions Guidelines for Planning Authorities'.
- Provides an extract from Louth Co Council Development Contribution Scheme with '**Warehouse/Open Storage**' use classification highlighted.
- Considers contributions imposed are excessively high and would discourage economic development.
- Development contribution should be reduced by €80,152 (amount attributed to water and surface water services), i.e. from €179,568 to €99,416.

10.0 RESPONSES TO FIRST PARTY APPEAL

Response by Second Party to First Party Appeal

- The benefit of the surface water drainage scheme are not set for each site but rather for the county where the scheme may possibly be attributed to public roads not directly linked to Greenore.
- Argument by applicant that scheme does not benefit from a surface water drainage scheme is not justified.
- Level of contribution was reduced from €37.27 to €18.64 to reflect the reduction recommended by manager's order on 17 January 2014 to remove the water element. Water was not charged in this instance.
- Appropriate class, i.e. '**Industrial**' was used by the PA for calculation of levy. '**Warehouse/Open Space**' classification would not be applicable and contribution scheme makes no reference to '**Open Storage.**'
- 50% reduction was applied to support expansion of authorised industrial operations - as per Table 3 - Reduced Contributions.

11.0 FURTHER RESPONSES

Response by First Party to Second Party's Response to First Party and Third party Appeals

In relation to the **second party's response to the third party appeals**, the first party welcomes the response by the second party and their support for the development.

The first party's response to the **second party's response to the first party appeal v condition 10** includes the following points:

- Disputes PAs statement that the development contribution scheme is not applied on a site specific basis.
- There is a statutory requirement that Planning Authorities must ensure that contributions reflect the public infrastructure required to facilitate a particular development.
- Notes the PA accept that the Local Authority are not providing any surface water infrastructure to facilitate the development.
- No additional demands for 'surface water and water services', therefore this element (€80,152) is not warranted.
- Restates position that water is included within the contribution charge and this should not be so given the transfer of water services (and associated charges) to Irish Water.
- Includes an extract from Appendix B of managers Order No. 024/141A with the '**warehouse/open space**' classification marked.
- Considers there are anomalies within the Development Contribution scheme.

12.0 OBSERVATIONS

No observations were received on this appeal.

In relation to the issue that the development might detract from the appearance of protected structures within an Architectural Conservation Area, the Board invited submissions from the following:

An Taisce, The Heritage Council, An Chomhairle Ealaíon, Failte Ireland, DAU-DAHG. No submissions were received within the statutory timeframe.

13.0 POLICY CONTEXT

The Louth County Development Plan 2009-2015 was the relevant development plan at the date of lodgement of the planning application (July 2015). The current development plan, i.e. Louth County Development Plan 2015-2021 was since adopted on 26 October 2015 and is the relevant plan for the assessment of this appeal.

13.1 Louth County Development Plan 2015-2021(CDP)

The site is zoned as **industrial/residential**. It is located within a **Level 4 settlement**, which are the smallest category of settlement in County Louth.

The following extracts from the CDP are of relevance:

Policy TC 41 - To support the development and expansion of the ports of Drogheda, **Greenore**, Dundalk and Clogherhead subject to the preparation of a masterplan and compliance with all relevant EU policies such as Water Framework, Habitats, SEA and EIA Directives.

Section 7.9.1 National Ports Policy 2013 (DTTS)

References policy within this document which aims to increase the contribution of the marine sector to the overall economy.

Architectural Conservation Area (ACA) and Protected Structures

The ACA boundary includes the bungalows on the southern outskirts, Euston Street, Andlesey Terrace and the coastguard houses. The site is not itself located within the ACA but is located directly opposite the site along R175. There are c.11 no. protected structures which lie proximate to the site.

Policy HER 49 - To require that any new development on the periphery of an ACA does not detract from the existing character of the designated ACA.

Natura 2000 sites

The coastline is protected by a number of statutory designations including two Natura 2000 sites, Carlingford Shore SAC (Sitecode 002306) and Carlingford Lough SPA (Site code 004078).

Appendix 13- Strategic Flood Risk Assessment - Section 4.11 – Greenore

With the area zoned for industrial / residential there is an area of existing industrial / warehousing development at risk. However, this falls into the less vulnerable category of the guidelines.

Zoning in Flood Risk Areas

The main flood risks in the village of Greenore arise along the shoreline from Coastal Flooding in locations zoned as “Industrial/Residential”,

where a site specific FRA would be required for any development to demonstrate compliance with all the criteria of the Justification Test for Development Management.

14.0 ASSESSMENT

14.1 Introduction

I have read and considered the contents of the application, grounds of third party appeal, responses, planning policy and observations on file. I have also attended the site and environs. The following assessment covers my considerations of the key planning issues and also encapsulates my *de novo* consideration of the application. It also covers my assessment of the first party appeal v Condition No.10.

I consider the key issues in determining the application and appeal before the Board are as follows:

- 1. Principle of the development**
- 2. Impact on Greenore Village including ACA**
- 3. Traffic and Road Safety**
- 4. Flood Risk**
- 5. Appropriate Assessment**
- 6. Other**

I will deal with these issues as set out under the respective headings. At the outset, I note that Greenore port is a privately owned commercial port and has been in operation for c.140 years old. It is stated that the main reason for the proposed development is to provide additional storage space and better management for steel material/products in response to legislative changes for steel storage which results in more space being required for its storage. It is submitted that the development itself will not lead to any increase in steel product or associated traffic demand. It is also submitted that the provision of the additional storage area is crucially importance for the operation and development of Greenore Port.

14.2 Principle of the Development

Within the **2013 National Ports Policy by DTTS**, objectives are included which aim to increase the contribution of the marine sector to the overall economy. Greenore port is categorised as a port of 'regional significance'.

Policy TC 41 of the Louth County Development Plan 2015-2021 supports the development and expansion of the ports of Drogheda, **Greenore**, Dundalk and Clogherhead subject to the preparation of a masterplan and compliance with all relevant EU policies.

Map 2.23 contained within Appendix 2 of the Louth County Development Plan shows the site contained within an area zoned '**industrial/residential**'.

One third party appeal refer to the removal of '**port and related activity**' designation in favour of its earlier zoning of '**industry/residential**' following a material alteration during the making of the current County Development Plan. They express their concerns that the Planning Authority has nonetheless given a favourable decision to this application for port related activity.

The applicants submit that at the time of lodging the planning application in July 2015, the appeal site was the only appropriately zoned site available under the applicable Louth County Development Plan 2009-2015. They further submit that the more recently adopted Louth County Development Plan 2015-2021 also supports the development as the site is zoned 'industrial/residential'.

I am satisfied that the planning policy as set out in the current Louth County Development Plan 2015-2021 supports the proposed development. The site zoning clearly provides for industrial development and I consider that the external storage of steel cargoes fits an industrial development. The appellants consider that both residential and industrial development should be provided on the site within such a designation of industrial/residential. However, this is not a requirement where the site holds a dual designation. This would also be my stated view should a residential development have been put forward or if a future residential development were put forward under the current development plan.

I note that **Policy TC 41** of the Louth County Development Plan 2015-2021 is supportive of the development and the expansion of Greenore port subject to the preparation of a masterplan. A masterplan would certainly have been of assistance in this instance to inform the overall intention for the port development. This is particularly so in the context of a concurrent planning application lodged to Louth County Council (Ref 16/114) for a similar development in which a decision to grant permission issued by Louth County Council on 14 April 2016.

However, I do not consider that the absence of a masterplan is a reason for refusal as each application would be required to be assessed on its own merits.

In conclusion, I am satisfied that the proposed development on a site zoned industrial/residential aligns with applicable planning policy in support of the development of Greenore port. Accordingly, I consider that the **principle** of the development is wholly acceptable and in accordance with the proper planning and sustainable development of the area. In relation to other principal planning considerations, I will deal with these under the respective headings.

14.3 Impact on Greenore Village including ACA

Objectives within the current Louth County Development Plan require the preservation of the special character of the Greenore village and its setting, to protect the landscape setting of the village and outward views and to preserve the historic street pattern and character.

The third party appellants consider that it would not be proper planning to permit a steel yard located directly across the road from 4 established houses, particularly that these houses have overlooked a green space since the 1800s. The point is made that these houses are protected structures and are contained within the Greenore Architectural Conservation Area (ACA). The appellants consider that the development would result in an adverse impact on the houses and would make Greenore a less desirable place to live. They consider that the development of the site solely for industrial use would remove the potential for the residential community to expand and would negatively impact on the economic development of Greenore especially in relation to tourism.

In response, the first party submits that Greenore is centred on the industrial heritage as a port village and that the port has played and continues to play a central role in sustaining Greenore's economic base since its original construction by London and North Western Railway in 1873.

In terms of visual impact and impact on coastal views, the first party states that the site was screened from view of those houses by mature landscaping (mainly *Leylandii* species) along the R175 boundary which was blown down during recent storm events. They include an image of

that previous screening in support of their appeal response². The first party states that new robust hedging has recently been planted and will, when established provide similar screening.

The Planning Authority are satisfied that the expansion of Greenore would not be inhibited by the development of the site, given the Core Strategy which does not allocate an allowance for Greenore but directs 18.6 Ha of land across all 23 Level 4 settlements within County Louth including Greenore.

I note that there are no buildings proposed as part of the intended development and the perimeter berms proposed will be low in scale and height surrounded by a Paladin fence to the east and northern boundaries³. In terms of design, I consider that the greatest potential for visual impact would occur when the materials are stored on the site when in operation. However, having regard to the recent screen planting/ landscaping, which it is stated replaces previous mature landscaping lost in recent storm events, I consider that in time, this landscaping would serve to mitigate against the visual impact when viewed from the public road. The landscaping would undoubtedly reduce or remove the open private views but there is no protected public view along the R175 at this location. Google streetview (dated 2009) shows mature landscaping along the front of the site and I am satisfied that the arguments submitted by the first party in respect of previous landscaping are credible. I recommend a condition regarding landscaping be attached should the board be minded to grant permission. I also recommend a condition should attach to limit the height of the storage to be no greater than 2.45m at any location. In terms of the Paladin fencing proposed on the eastern and northern elevations, which is stated to be 2.45m high mesh type fence, I consider this is acceptable because of its aesthetically lightweight construction which allows through visibility. I note that there is no such Paladin fencing proposed along the main R175 road, which I welcome.

Having reviewed the applicable Louth County Development Plan 2009-2015, the proposed development lies outside of the Architectural Conservation Area (ACA). I am satisfied, given the low height of the material proposed to be stored, together with appropriate landscaping,

² Fig 3 of First Party Appeal Response - Page 6.

³ Drawings show the paladin fence on eastern and northern boundaries; request for further information and response refers only to the eastern boundary.

that the proposed development would not impinge on the residential amenity of the protected structures proximate to the site nor would it conflict with the objectives to preserve the character of the ACA. I fully concur with the applicant that the village was designed and built around the port and the operation of the port is central to the protection of the heritage of Greenore. I consider the development would have no impact, positive or negative on the draw of tourism to the area.

In conclusion, I consider that permission should not be refused on its impact on Greenore and the ACA as it would not have a significant impact on adjoining residential amenities or on the wider visual amenities for reasons I have outlined above.

14.4 Traffic and Road Safety

The appellants raise concerns regarding the impact on the increase in HGV traffic and associated noise, dust and safety of residents and visitors. The applicant submitted a Traffic and Transport Assessment (TTA) prepared by MHL Consulting Engineers. The assessment is based on a worst case scenario of 188 truck movements in each direction between the port and the site per day for a large shipment of cargo. On the application form, the estimated traffic volume was stated as 120 trucks/day. It was also put forward that the intensity of traffic will not increase as a result of the development, which is for better storage and management of steel. A graph of the tonnages of steel reinforcement into Greenore port was enclosed with the planning application which shows a high volume during the economic boom period (2004-2008), a significant drop-off thereafter in the recession years (2009-2013) and steady growth since.

In the response to the appeal, the applicant states that the port is not handling the same tonnages as it was before the recession and that the storage space is required to provide better storage facilities for steel where regulatory changes have resulted in the requirement of more space to store steel, particularly reinforced steel. It is stated that trucks accessing and egressing the port will do so via the R175 and Shore road without passing through the core of the village.

The TTA report refers to the existing entrance, which is located within a 50kph speed limit. It states that it has a sight distance of 70m in both directions at a 2.4m setback from the road edge in line with NRA TD14-42/11 Geometric Design of Major/Minor junctions for design speed of

50kph. The Infrastructure section were satisfied with the Traffic Impact assessment and recommended a grant of permission subject to conditions.

On the day of my inspection, I noted active movement of steel cargo from the port to the current storage site. The road was well trafficked with HGVs shunting steel from the port to an existing storage area proximate to the appeal site. The applicant states that the new site will accommodate more storage area to comply with requirements for wider space to store steel following new legislation. In the context of existing port activity and the inherent purpose of the port, I am of the opinion that the volume of HGV traffic that would be generated as a direct result of the proposed development would unlikely be significant and I consider the development should not be refused on traffic grounds.

14.5 Flood Risk

The appellants state that a flood risk assessment should have been submitted and support their claim with the Greenore Composite maps, which give an indication that part of the site is within an area where there is some potential for flood risk, i.e. shown as Flood Zone A and Flood Zone B. Appendix 13 – Strategic Flood Risk Assessment - S 2.13 of the Louth County Development Plan 2015-2021 generally requires that a flood risk assessment of appropriate scale would be prepared where development is proposed in such zones.

While I consider a Flood Risk Assessment would have been of assistance in this case I am also cognisant that the development is intended for external storage, which will be placed on a stone surface underlain by a geotextile membrane and thus would not decrease the permeability of the ground significantly.

I am also of the opinion that the nature of the development for open storage would be less vulnerable and in the event of any flooding and would recover more easily than for example, if a building, yards or other such impermeable areas were proposed. I note that the Local Authority infrastructure section raised no objection on flooding grounds and were satisfied that the site is not vulnerable to flooding.

Overall, I am satisfied that the development should not be refused on grounds of flooding.

14.6 Appropriate Assessment

The proposed development is surrounded by two Natura 2000 sites, Carlingford Shore SAC (Sitecode 002306) and Carlingford Lough SPA (Site code 004078).

A Stage 1 “Screening for Appropriate Assessment” report has been undertaken by Breffni Martin and is enclosed with the application. The overall conservation objective of Carlingford Lough SPA includes:

- A036 Brent Goose *Branta bernicla hrota*: - ‘To maintain the favourable conservation condition of light-bellied Goose in Carlingford Lough SPA’.

Carlingford Shore SAC supports 2 protected habitats:

- 1210 Annual vegetation of drift lines with a conservation objective ‘To maintain the favourable conservation condition of annual vegetation of drift lines in Carlingford Shore SAC.’
- 1220 Perennial vegetation of stony banks with a conservation objective ‘To maintain the favourable conservation condition of perennial vegetation of stony banks in Carlingford Shore SAC’.

It is stated in the report that c.25-30 grey seals and up to 300 common seals haul out on reefs around Greenore. These species are listed in Annex II under the EU Habitats directive.

The likely impacts as a result of the development are identified as:

- Dust and construction material which may become windblown onto drift vegetation.
- Small oil leaks entering the SAC.
- Noise and Vibration from trucks and operations may disturb brent geese using SPA.

It is stated that mitigation measures will be taken to minimise impacts as follows:

- Construction material from blowing onto designated sites (e.g. dousing with water, not working on very windy days).
- Small leaks of oil will be absorbed by gravel and crushed rock.
- Because of level of noise and distance from the designated site, taken in the context of the background noise, impact on birds are unlikely.

In response to a request for further information, it is submitted that pale-bellied Brent geese are unlikely to use the 2 Ha development site for grazing and that even if they would use it, the removal would not have any significant effect on the Brent geese given the huge hinterland of 5000+ ha of alternative agricultural fields in the Cooley peninsula.

The AA Screening concludes that the distance from the designated sites when taken into in combination with mitigation measures, make any possible effect on the conservation objectives unlikely.

I consider therefore that it is reasonable to conclude, on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the nature and scale of the proposed development, the nature of the receiving environment and the mitigation measures proposed, it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site in the vicinity of the site, in view of the sites Conservation Objectives. I am satisfied that a Stage 2 Appropriate Assessment (and submission of a Natura Impact Statement) is not therefore required.

14.7 Other

Uses

The applicants have submitted that a grant of permission should not limit the use of the site to solely storage of steel. I consider it is not possible to assess the development for storage of unknown items and consider that should the cargo products to be stored on site change materially, it would need to be re-assessed by way of a new planning application. Therefore I recommend that the use of the site should be limited to the storage of steel products by way of a condition should an order to grant permission be made by the Board.

National Monument

The appellants refer to a national monument – LH 009-012 (Prehistoric lithic scatter). I am satisfied that this monument lies outside of the site and I do not consider that the development would impact on it. However, I recommend that pre-development archaeological testing should take place on the site in accordance with any requirements of the Department of Arts, Heritage and the Gaeltacht and that a condition of this nature should attach should permission be granted.

14.8 First Party Appeal v Condition No.10

The first party have lodged an appeal against condition No. 10 on the basis that the development contribution scheme has not been properly applied. The applicable scheme is the Louth County Development Contribution Scheme 2010-2014 and I attach a copy of it and a subsequent manager's order in the appendix which accompanies this report.

The elements of the contribution applied by way of Condition No.10 is as follows:

- a. Road Improvements = €91,332
- b. Surface Water drainage = €80,152
- c. Recreation and Amenity = €8,084

The applicant argues that the scheme was incorrectly applied, particularly that there would be no additional demand for the provision of surface water infrastructure. In addition, they consider that there was no reduction applied in the figure levied by the Planning Authority, which they highlight as €18.64 for 'water and surface water' despite the fact that water services is no longer a function of Louth County Council. They consider that **surface water and water drainage** element should be removed with a consequential reduction of €80,152 (amount attributed to water and surface water services).

In response to the appeal, the Planning Authority contend that surface water contributions are not worked out on a site by site basis and that the surface water element of the scheme may possibly be attributed for public roads. They state that the level of contribution for 'surface water and water' was reduced from €37.27 to €18.64 taking into account the manager's order dated 17 January 2014 which reflects the transfer of water services to Irish Water and accordingly no charge for water was applied as part of Condition No.10. In relation to the argument made by the applicant on the applicable **use classification** for calculating the contribution figure, the Planning Authority state that *'the scheme makes no reference to 'open storage' and 'open space' is the closest reference which is clearly not appropriate for the storage of steel and related activities'*. The Planning Authority also state that a 50% reduction was applied to support economic development and in line with Table 3 of the scheme which provides for reduced contributions for authorised expansion to economic development.

The applicant responded to the Planning Authority's response stating their disagreement with the Council's rationale that the provision of 'surface water services' contributions should attach on a county wide basis and for roads drainage. The applicant consider that road drainage is already covered under the separate element of €91,332 contribution for roads. They restated their firm view that the contribution for water was applied to the development referring to an extract from the applicable Managers order (Page 2 of 5). I would like to inform the Board that this extract from the Managers order refers to the original contributions, i.e. prior to the recommended changes and must be read in conjunction with Page 4 of 5 of the same document where the figures for 'surface water' including the recommendation to remove the contributions for water are listed.

On the argument of 'use classification', it is clear to me that the Planning Authority have based their contribution calculations including 'surface water' on one use classification whereas the applicant is referring to a different use classification throughout their grounds of appeal. The Planning Authority applied the scheme based on the proposed use classification of '**Industrial / Manufacturing / Retail Warehousing / Commercial/Agricultural Store (Commercial)**'. In the scheme, the contribution applicable amounts per sq.m of gross floor area are listed as €21.24 (Roads), €37.27 (water and surface water) and €1.88 (recreational, community facilities and amenities contribution).

There other classification referred to by the applicant for '**Warehouse/Open Storage**' with contributions amounts per sq.m of gross floor area are listed as €23.57 (Roads), €18.54 (water and surface water) and €1.88 (recreational, community facilities and amenities contribution).

The adoption of the contribution scheme is a reserved function and cannot be amended by way of a manager's order. However, given that the functions for water and waste water services transferred to Irish Water and on foot of a DECLG circular PS 21/13 dated 30 December 2013, a recommendation was made by way of a managers order on how the scheme would be implemented, having regard to the transfer of functions to Irish Water. This provided for an amendment of the breakdown and level of development contributions within the scheme so as to exclude water and wastewater charges. The combined charge for water and surface water was reduced from €37.27 to €18.64 in the '**Industrial / Manufacturing / Retail Warehousing / Commercial/Agricultural Store (Commercial)**' classification which the Council then applied to the subject development based on external

storage area. During the planning process, the applicant was requested by email to provide the area of storage on site, which they responded would be 0.84 ha and it seems to be on this basis that the contribution scheme was subsequently applied to the development although the Planning Authority used a figure of 8600 sq.m rather than 8400 sq.m. Where the applicant contends that the figure for surface water was not adjusted to reflect the removal of water services, this is not the case. The applicant is referring to the '**Open Storage**' use classification which is €9.32 whereas the Planning Authority applied the figure of €18.64 for surface water in what they considered to be the relevant classification, i.e. '**Industrial / Manufacturing / Retail Warehousing / Commercial /Agricultural Store (Commercial)**'. Coincidentally, the reduced figure in this classification⁴ is the same as the unreduced figure in the '**Warehouse/Open Storage**' classification.

One small nuance I wish to mention for clarity is that the parent contribution scheme refers to '**Warehouse/Open Storage**' and the reference in the subsequent manager's order refers to '**Warehouse/Open Space**'. It is referenced as one of the reasons for not using this classification by the PA who stated the scheme did not include 'Open Storage' when in fact it does (within the adopted parent scheme). The PA furthermore considered that the 'Open Space' classification would not be applicable.

I am satisfied that based on the methodology and use classification chosen by the Planning Authority to base the contributions, that 'water services' has not been included in their calculations.

However, I cannot at all agree that a 'surface water' contribution is warranted as the development does not propose or require to connect to public surface water network and consequently, the development will not result in any additional demands on public surface water infrastructure. In accordance with Section 48 of the Planning and Development Act 2000, as amended, contributions can only be applied for the provision of public infrastructure and facilities that will **benefit** a development. Regarding the reference to surface water benefiting roads in the Planning Authority's response, I am satisfied that a contribution for roads has already been applied under the roads contribution in part (a) of Condition 10 which would include road drainage. It is not necessary or appropriate to also apply drainage of roads as a surface

⁴ Industrial Manufacturing / Retail Warehousing / Commercial /Agricultural Store (Commercial) use classification.

water charge as it would lead to an element of 'double charging', which would be inconsistent with the primary objective of levying development contributions.

This leads me to what I consider is the most pertinent point in this first party appeal i.e. whether or not the scheme applies at all to the proposed development. The adopted parent contribution scheme bases its contributions on sq.m of gross floor area. It references **gross area** under **footnote 1** of the scheme as **GFA (Gross Floor Area)** which is defined as *'the area ascertained by the internal measurement of the floor space on each floor of a building; i.e. Floor areas must be measured from the inside of the external wall'*.

In my consideration of this appeal, I note that there is no building proposed on the site. While it might ordinarily be reasonable to apply a contribution to a development of this nature, I am clear that the adopted scheme does not provide for such a contribution for the development of external storage. The use classification selected refers to **gross floor area**, which is defined in the scheme as referring to the **'floor area of a building'**. It does not refer to external site storage area.

It would not be normal for development contributions to be applied to other external yard space, for example storage of fertilizer and fuel on a hardware or builders providers yard external to a building unless of course such external areas are included in an adopted scheme which is not the case in the current Louth contribution scheme. I consider that where there is no building proposed as part of this development, it is not open to the Planning Authority or by way of extension, the Board to levy the external storage space when the scheme has no provision for a charge for external storage.

It is a statutory requirement that contributions are applied in accordance with the adopted scheme. The DoEHLG's circulars 4/2003 and 5/2007 provide guidance on the application of the Development Contribution schemes, recognising them as bringing *"transparency into the way in which development contributions are levied and applied. Planning authorities must ensure that, when a prospective developer examines a scheme, he or she will be able to clearly see the level of contribution they are expected to pay, as well as the basis for levying the contribution" and with regard to appealing development contributions"*.

I consider the level of contribution expected to be payable for the development could not be foreseen by the applicant at the outset

because it is not contained within the adopted Development Contribution Scheme for County Louth. For the reasons outlined above, particularly that the scheme does not provide for external storage, I consider that **no contributions** are applicable in this case.

I note the applicant did not specifically raise the gross floor area (GFA) of a building in their appeal. Nonetheless they appealed Condition No.10 on the basis that the scheme was not correctly applied. In that context, I consider that my recommendation to the board that the scheme does not at all apply in this case, does not raise any new issue.

Should the Board differ from my view and decide that contributions are applicable, I consider that a contribution for surface water is not warranted as the development does not require a connection to the public surface water network and the development would not result in any additional demands on surface water infrastructure.

I also consider that the use classification most aligned to the development would be that of **'Warehouse/Open Storage'** as per the parent development contribution scheme notwithstanding the amendment to read **'Warehouse/Open Space'** by way of the subsequent manager's order. I consider the change of the word 'storage' to 'space' is likely to have arisen out of a simple clerical error given that the intention for the manager's order was only to remove the water element and noting that the scheme itself can only be changed by the adoption under a reserved function.

In conclusion, I firstly advise the Board that I consider there is no provision within the Louth Contribution scheme 2010-2014 for external storage as proposed and therefore I recommend that no development contributions apply. If the Board differ with my view, I consider that the contributions to be applied would be based on the **'Warehouse/Open Storage'** use classification in Appendix B of the scheme which would include the following:

Roads: €23.57 x 8400 sq.m reduced by 50% = ~~€98994~~

Recreational + Amenities: €1.88 x 8400 sq.m reduced by 50% = ~~€7896~~

Total = ~~€106890~~

15.0 CONCLUSIONS AND RECOMMENDATION

Having regard to the assessment, I consider that the proposed development would be in keeping with the proper planning and sustainable development of the area. Accordingly, I recommend that **permission be granted** for the development in accordance with the following draft order.

REASON AND CONSIDERATIONS

It is considered that, subject to the conditions set out below, the proposed development on an area zoned industrial/residential would be appropriate and would support Policy TC41 of the Louth County Development Plan 2015-2021 which seeks to support the development and expansion of the ports in County Louth, including Greenore. Having regard to the low increase of HGV traffic that would be generated as a direct result of the development, it is considered that the development would be acceptable in terms of traffic safety and convenience. It is also considered that the development would not significantly impact on Greenore Village which is the subject of an Architectural Conservation Area nor would it pose an unacceptable flood risk. It is further considered the development, would not seriously injure residential amenity or the visual amenity of the wider area. After an appropriate assessment screening has been carried out on the implications of the proposed development in view of the conservation objectives of the SAC on the Carlingford Shore and the SPA at Carlingford Lough it is considered that the development would not adversely affect the integrity of either Natura 2000 site. The proposed development would therefore be in keeping with the proper planning and sustainable development of the area.

I consider there is no provision within the Louth Contribution scheme 2010-2014 for external storage and accordingly no development contributions apply.

CONDITIONS

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application on 29th July 2015 as amended by the further plans and particulars submitted on 8th December 2015, 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 the development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The permission shall be restricted to the storage of steel materials/products only unless authorised by way of a separate permission for the storage of other products.

Reason: In the interest of orderly development.

3. The storage of steel products shall be restricted to a maximum height of 2.45m throughout the site unless authorised by way of a separate permission for storage of materials over this height.

Reason: To safeguard the visual amenities of the area.

4. (a) The site shall be screened in accordance with a scheme of screening measures and boundary treatment in respect of the site which shall be submitted to, and agreed in writing with, the Planning Authority prior to commencement of the development. This shall include the finished details of the proposed berms, perimeter fencing location and height for written agreement of the Planning Authority.

(b) Full details of existing and proposed landscaping shall be submitted and agreed with the planning authority prior to the commencement of development. All landscaping and planting shall be undertaken in the first planting season following the commencement of the development.

Reason: In the interest of visual amenities of the area.

5. Proposals for implementation of mitigation measures as identified in the Appropriate Screening Assessment report in order to protect the Natura 2000 site complex shall be submitted to and agreed in writing with the Planning Authority prior to commencement of development.

Reason: In order to protect the Natura 2000 site complex.

6. (a) The developer shall engage the services of a suitably qualified archaeologist (licensed under the National Monuments Acts 1930-2004) to carry out pre-development testing at the site at locations where ground disturbance is to take place. No sub-surface work shall be undertaken in the absence of the archaeologist without his/her express consent.

(b) The archaeologist shall notify the Department of Arts, Heritage and the Gaeltacht (DAHG) in writing at least 4 weeks prior to the commencement of site preparation works. This will allow the archaeologist sufficient time to obtain a licence to carry out the work.

(c) The archaeologist shall carry out any relevant documentary research and may excavate test trenches at locations chosen by the archaeologist, having consulted the proposed development plans.

(d) Having completed the work, the archaeologist shall submit a written report to the Planning Authority and to the DAHG for consideration.

(e) Where archaeological material is shown to be present, avoidance, preservation in situ, preservation by record (excavation) and/or monitoring may be required in accordance with the requirements of the DAHG.

(f) No site preparation or construction work shall be carried out until after the archaeologist's report has been submitted and permission to proceed has been received in writing from the Planning Authority in consultation with the DAHG.

Reason: In order to conserve the archaeological heritage of the area and to secure the preservation (in-situ or by record) and protection of any archaeological remains that may exist within the site.

7. Site development works shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In order to safeguard the residential amenities of property in the vicinity.

8. All necessary measures, as may be determined by the Planning Authority, shall be taken by the developer/contractor/servants/agents to prevent the spillage or deposit of clay, rubble or other debris on adjoining public roads or footpaths during the course of the development works. The developer shall ensure that all vehicles leaving the development are free from any material that would be likely to deposit on the road and in the event of any such deposition; immediate steps shall be taken to remove the material from the road surface. The developer shall be responsible for the full cost of carrying out of road/footpath clearing work.

Reason: In the interest of traffic safety and convenience and to protect the amenities of the area.

9. Should the site cease to be used for the storage of steel and where no other use has been authorised, restoration of the site shall be carried out in accordance with a restoration plan which shall include details of the re-instatement of the topsoil removed, landscape proposals and a timescale for implementing. This plan shall be prepared by the developer and shall be submitted to and agreed in writing with, the Planning Authority prior to commencement of development.

Reason: In the interest of orderly development and to safeguard visual amenities of the area.

Patricia Calleary
Senior Planning Inspector
06 May 2016

Appendix:

Site Location Maps

Extracts from Louth County Development Plan 2015-2021

County Development Contribution Scheme 2010-2014 and Managers Order No. 024/141A

Photographs