



An
Bord
Pleanála

Inspector's Report

An Bord Pleanála Ref. PL07.246533

| | |
|-------------------------------------|-------------------------------------|
| Proposed Development | Retention of a sheep fence |
| Planning Authority | Galway County Council |
| Planning Authority Reg. Ref. | 16/5 |
| Applicant(s) | Arthur Walsh |
| Type of Application | Permission |
| Planning Authority Decision | Grant Permission |
| Appellant(s) | An Taisce |
| Observer(s) | Sean Kyne TD Cllr Eileen Mannion |
| Date of Site Inspection | 8th August, 2016 |
| Inspector | Stephen Kay |

1.0 Site Location and Description

The appeal site is located to the north of the R344 c. 2km to the north of Lough Inagh and c. 3km from Kylemore Abbey. The area is characterised by a mixture of blanket bog and grassland. The south western side of the site bounds the R344 regional road that connects the N59 to the south with the N59 further to the north in the general vicinity of Kylemore Abbey and Letterfrack. An unsurfaced track accessed off the R.344 to the west of the site forms the northern boundary of the site. The northern and western boundary of the site comprises a wire sheep fence which is the subject of an application for retention.

To the east of the fenced area is located the Tooreenacoona River and a tributary of that river adjoins the south eastern limit of the constructed sheep fence at a point where this stream crosses under the R344.

The stated length of the fence is 1,850 metres.

It is noted that there are significant other lengths of the R344 where similar fencing has been erected and these areas include that located on the opposite side of the R344 from the fencing which is the subject of this appeal.

It is stated in the application documentation that the first party is the owner of the site and that the land which is enclosed by the construction of the fence is not commonage.

2.0 Description of Development the Subject of Proposed Retention

The proposed development comprises the retention of a sheep fence that has been constructed in a location bounding the northern side of the R344 and running to the north and east from this road. The construction of the fence has been undertaken such that when combined with watercourses and existing fencing to the east and south east it encloses a significant area of land. The exact extent of these lands is not stated in the application however I would estimate it at c. 60 ha.

The fencing erected on the site comprises Department of Agriculture approved wire sheep fencing attached to 100mm diameter timber poles located at 3 metre centres.

It is stated in the application documentation that the fencing was erected manually and that no equipment was brought on site during the course of the works.

3.0 Planning History

There is no record in the report of the Planning Officer of any planning history relating to the appeal site or lands in close proximity to the site.

The online planning search indicates that there was an application Ref. 16/345 for the erection of agricultural fencing and associated works at a location on the R344 to the south of the current appeal site however this application is recorded as incomplete.

There is also an enforcement Ref. EN15/135 which appears to relate to fencing erected a short distance to the south of the current site.

PL05.246747 - The Board recently made a decision to grant permission in the case of an appeal by the same third party (An Taisce) against the granting of permission for a sheep fence at Glencolumbcille, Co. Donegal.

4.0 Planning Authority Assessment and Decision

4.1 Internal Reports

Planning Officer Report – The report of the Planning Officer notes the submission received from An Taisce and the location of the site relative to Natura 2000 sites. A discrepancy between the site boundary in the application and that in the submitted Appropriate Assessment Screening Report is noted and further information on this issue and the dimensions of the fencing erected is recommended.

4.2 Request for Further Information

The following items of further information were requested by the Planning Authority prior to the issuing of a Notification of Decision:

1. Map to a scale of 1:2500 showing the exact location of the fence as the submitted map does not correlate with that submitted as part of the AA screening.
2. Drawing to a scale of 1:100 showing a section of the fence.

In response the applicant submitted a plan of the site showing the location of the fencing. This map is the same as that originally submitted with the application.

It was also clarified that the fence is 900 mm in height and supported on 100mm diameter wooden poles which are at 3 metre centres. The fence is a mesh type fence as approved for sheep fencing by the Department of Agriculture.

4.3 Notification of Decision

A Notification of Decision to Grant permission subject to two conditions, and consistent with the recommendation contained in the report of the Planning Officer, was issued by the Planning Authority.

5.0 Appeal Submission and Observations

5.1 Third Party Appeal

The following is a summary of the main issues raised in the appeal

- That the site is located in an area that is landscape sensitivity 5, which is the highest rating for landscape and relates to unique landscapes.
- The area is one of outstanding landscape value and it is considered that the development is visually intrusive and an unsympathetic element in the landscape. The development detracts from the visual amenities and unique character of the landscape and is therefore contrary to Policy LCM1 of the Galway County Development Plan, 2015-2021.
- That the development is contrary to Objective LM3 which seeks to preserve the traditional open unfenced landscape.

- The development may impact on views shown on Map FPV1 of the development plan and the Board should ensure that no views are impacted upon.
- That the development is located within Maumturk Mountains SAC. The site synopsis for the site notes the fact that the main threats are overgrazing, peat cutting and afforestation. Submitted that to permit the fencing would be contrary to Policy NHB1 of the Plan regarding the protection and enhancement of natural heritage and biodiversity and the protection of the integrity of European sites.
- That no need justification for the fencing has been submitted and there is no basis for the use of the bog land for grazing.
- That the appropriate assessment screening does not contain sufficient information regarding the cumulative impact from the proliferation of fencing in the area to conclude that there would not be a significant impact on the Natura 2000 site.

5.2 Observers to Appeal

Two observations on the appeal have been received. The following is a summary of the main issues raised in these submissions:

- That the SACs are maintained by livestock that graze these habitats and without grazing the landscape would change. Failure to graze the land would result in the stocking level falling and the area not being designated for foraging.

- That the fencing is required in view of increased traffic and for safety.
- That the risk of land abandonment is very real in this part of Connemara.

6.0 Response Submissions

6.1 First Party Response to Grounds of Appeal

The first party appeal response is accompanied by a landscape and visual impact assessment report prepared by a landscape architect. The following is a summary of the main issues raised in the response of the first party to the grounds of appeal:

- That the contents of the appeal was not raised in the objection submitted to the planning authority. The proposed fence is standard in design and construction.
- That the fence is a continuation of existing structures and because of its low level it does not obstruct views.
- That the issue of overgrazing referred to in the appeal is outdated as it has been dealt with by stock reduction and land management by the department of Agriculture. Under grazing is now more of an issue (see pg. 16 of AA screening).
- That the first party wishes to participate in the organic grazing scheme a requirement of which is fencing to exclude non organic animals.

- That with the increased traffic volumes on the R344 it is not safe to have animals accessing the road.
- That other fencing was not included in the appropriate assessment as this is not an issue that affects the SAC. The local NPWS ranger is aware of the fencing and NPWS have not commented on the application.
- Questioned whether the appeal is valid as additional issues raised at appeal stage.
- Letter submitted from the Irish Natura and Hill farmers Association supporting the application stating that it is important that the natura habitat be managed in a sustainable way and that a refusal of permission would have significant consequences for site management.
- A landscape and Visual Impact Assessment report has been submitted that states that the scale of development erected is visually inconspicuous and maintains the visual openness of the landscape. Outside of local views the fencing is not visible and the overall magnitude of change to the landscape character of the area is judged to be no change. The effect on the landscape character is judged to be neutral. A number of specific views are presented in the form of photomontages and in all cases examined the significance of the visual effect is judged to be neutral.

6.2 Planning Authority Response to Grounds of Appeal

There is no record on file of a response being received from the Planning Authority to the grounds of appeal raised.

7.0 Planning Policy

The appeal site is located on lands that are stated in the report of the Planning Officer and the landscape and visual impact assessment report submitted by the first party to be within an area designated as landscape sensitivity Class 5 (unique). From an inspection of **Figure LCM2** of the development plan it is not completely clear whether the site is located within an area identified as Class 5 (unique) or Class 4 (special).

Regarding walking routes and right of ways, **Objective RA6 and Policy PRW1** seek to protect public rights of way and the intrusion of development into walking routes and established rights of way.

Policy / Objective NHB1 relates to natural heritage and biodiversity and states that it is policy to support the protection conservation and enhancement of natural heritage, including the protection of European sites.

Policy LCM1 of the plan relates to the preservation of landscape character where required for proper planning and sustainable development and including the preservation and enhancement of views and prospects.

Objective LCM1 states that the planning authority will have regard to the landscape sensitivity classification of a site in considering proposals for development.

Objective LCM2 states that landscape sensitivity ratings shall be an important factor in the assessment of potential uses.

Objective LCM3 specifically relates to open or unfenced landscapes and states that it is an objective to preserve the status of such traditionally open / unfenced landscapes. The merits of such cases to be assessed in light of the landscape sensitivity ratings and views of amenity importance.

8.0 Assessment

In my opinion the following are the main issues relevant to the consideration of this appeal:

- Appropriate Assessment
- Impact on Visual Amenity

8.1 Appropriate Assessment

8.1.1 The application for retention was accompanied by a document titled Appropriate Assessment Screening and prepared by Aster Environmental Consultants Limited. This screening assessment assesses the development for which retention is sought in the context of the Maumturk Mountains SAC (site code 002008) and the twelve Bens / Garraun Complex SAC (site code 002031). The conclusion of the assessment is that no significant effects either individually or in combination with other plans or projects are anticipated on the conservation status of either of the above sites.

8.1.2 The site is located such that it is within the Maumturk Mountains SAC area. The site is also immediately adjacent to the Twelve Bens / Garraun Complex SAC which is

located on the southern side of the R344. The next closest sites are the Mweelrea / Sheeffry / Erriff Complex SAC which is located c. 5.5km from the site and the Connemara Bog Complex SAC which is located c. 9.5 km from the site. Given the nature of the development undertaken, the limited physical works undertaken, the lack of significant pathways to the above referenced two sites and the conservation objectives for the sites I do not consider that there is any potential that the development undertaken would have had or would be likely to have any significant effects on these European sites (Mweelrea Complex SAC and Connemara Bog Complex SAC) in light of their conservation objectives. It is therefore proposed to proceed with a more detailed screening assessment of the potential effects on the Maumturk Mountains SAC and Twelve Bens / Garraun Complex SAC sites.

8.1.3 Given that the application is for retention, in the event that it is determined that likely significant effects on the above sites cannot be screened out and a determination is made that in the event that an application for permission had been made for the development before it was commenced that appropriate assessment would have been required, then under s.34(12) of the Act it is not open to the Board to consider the case further and the development would require substitute consent.

8.1.4 The conservation objectives for the Maumturk Mountain SAC (site code 002008) are to maintain or restore the favourable conservation status of the following habitats:

- Oligotrophic waters containing very few minerals of sandy plains,
- North Atlantic wet heaths,
- Alpine and Boreal heaths,
- Blanket Bogs,
- Depressions on peat substrates of the rhynchosporian,
- Siliceous rocky slopes with chasmophytic vegetation,

It is also a conservation objective to maintain or restore the favourable conservation status of the following species:

- Salmon
- Slender naiad

8.1.5 The development undertaken has the potential to impact on a number of these identified habitats and species. The site is located in close proximity to the Tooreenacoona River which flows approximately north south to the immediate east of the fencing the subject of this retention application. There is a stream that crosses the R344 at the eastern end of the fencing and connects with the Tooreenacoona Stream. The ends of the development undertaken immediately adjoins these watercourses and it is also noted that existing fencing has previously been erected bounding these watercourses to the east and south of the site. The fencing has been erected at the western end of the site and which links the R344 with the track to the north (section B in the AA screening submitted) is in an area of wet heath habitat. Blanket bog and depression of peat substrate habitats are both widely occurring across the site and notably in the area of the erected fencing adjoining the R344. With regard to species, salmon are present within the catchment of the Tooreenacoona River.

8.1.6 The conservation objectives for the Twelve Bens / Garraun Complex SAC (site code 002031) are to maintain at or restore to favourable conservation status the following habitats:

- Oligotrophic waters containing very few minerals of sandy plains,
- Oligotrophic to mesotrophic standing waters with vegetation of the littorelletae uniflorae
- Alpine and boreal heaths

- North Atlantic wet heaths,
- Blanket Bogs,
- Depressions on peat substrates of the rhynchosporian,
- Siliceous scree of the montane to snow levels,
- Calcareous rocky slopes with chasmophytic vegetation,
- Siliceous rocky slopes with chasmophytic vegetation

It is also a conservation objective of the site to maintain or restore the favourable conservation status of the following species:

- Freshwater pearl mussel,
- Salmon
- Otter
- Slender naiad

8.1.7 The development the subject of this application is located outside of the boundary of the Twelve Bens / Garraun Complex SAC. There is therefore no direct impact on the conservation objectives of the site. The following potential impacts are identified with regard to the conservation objectives for this site:

- There is a potential impact on salmon population in the Tooreenacoona River as this river traverses both SAC sites and the end of the fencing for which retention is sought adjoins its banks.
- The otter population in the area crosses between both SAC sites and is in the immediate vicinity of the development.
- The proximity to the catchment of the Tooreenacoona River means that there is a potential for impacting on water habitats the maintenance at or restoration to favourable conservation status is a conservation objective of the site.

- There will be no direct impacts arising on bog or heath habitat within the Twelve Bens / Garraun Complex SAC site.
- Given the single point at which the works adjoin the Tooreenacoona River and the separation to the nearest recorded freshwater pearl mussel and Naiad populations (both in excess of 10km) there are no potential impacts on these populations.

8.1.8 Given the location and nature of the development undertaken and particularly the very limited groundworks involved in the construction, the fact that the bulk of the works were undertaken immediately adjacent to existing access roads or tracks and the stated non use of heavy machinery, the lack of emissions it is my opinion that the development undertaken cannot be considered likely to have significant downstream effects on any species or habitats that comprise the conservation objectives of the SAC sites identified above.

8.1.9 The potential impact on the development on the SAC from the increased concentration of grazing on the part of the Maumturk Mountains SAC site due to its enclosure is noted and this concern is expressed by the third party appellants in this case. It should be noted however that the lands which have been enclosed by the construction of the fencing are in private ownership and the land owner is required to comply with Department of Agriculture requirements. While no details of the exact stocking level per ha. is provided, the application states that the stocking rate has not changed since before the fence was erected and it is my opinion on the basis of the information presented and the examination of the site that there is no evidence of overgrazing of the lands that are now enclosed by fencing and therefore no indication of a significant impact on any of the conservation objectives of the SAC. It is also noted that the appellants make reference to there being no basis for the use of bog land for grazing, however the type of land enclosed within the fencing erected is clearly bog land, heath and grassland that is commonly used for grazing purposes.

As noted by the first party, the development has facilitated the closer control of the lands and the prevention of other animals not owned by the first party accessing these lands thereby facilitating the more efficient management of animal numbers on the site with resulting benefits for the SAC.

8.1.10 An inspection of the area in the vicinity of the installed fence posts did not indicate any clear evidence of erosion and taken in conjunction with the stated methodology by which the fence was erected, the ready access to the alignment of the fence from public roads or pathways and the separation of the bulk of the fence line from the banks of the Tooreenacoona River or its tributary, I do not consider that the construction of the fence or its continued presence would be likely to have a significant effect on the water quality dependant species and habitats, including salmon and oligotrophic waters, identified as conservation objectives for the two SAC sites. The fencing as erected will not have any significant impact on restricting the movement of otter through watercourses in the general vicinity of the development.

8.1.11 The third party appellant has raised specific concern with regard to '*...the potential cumulative impact as a result of the proliferation of fencing in this area*' and whether there is sufficient information available to conclude that the integrity of the Natura 2000 site (Maumturk Mountain) would be significantly impacted. With regard to in combination effects with other plans or projects and the potential impact on the Maumturk site it should be noted that there is significant existing fencing in the general area and specifically that the additional fencing is such that the effect is to separate the area enclosed to the south and east of this fence from the lands immediately to the north and north west. These two parcels of land were already separated from the wider SAC by existing fencing. The potential for impact on the overall SAC area is therefore very limited and as set out above would enable the better management of stocking levels in this part of the SAC. I do not therefore consider that the development, in combination with other similar developments in the

vicinity is likely to have a significant effect on the Maumturk Mountains SAC site in light of its conservation objectives.

8.2 Impact on Visual Amenity

8.2.1 The main basis for the objection of the third party relates to the perceived visual impact of the development and the fact that the site is identified as class 5 in terms of landscape sensitivity where the landscape is considered to be unique. Objective LCM 1 states that the Planning Authority shall have regard to the landscape categorisation in assessing development proposals. Objective MCM 3 relates specifically to open or unfenced landscapes and states that it is an objective of the council to preserve the status of such landscapes and that development proposals would be assessed on a case by case basis. It is submitted by the third party appellant that the decision of the council to grant permission is contrary to Objectives LCM 1 and LCM3.

8.2.2 As highlighted by the first party in their appeal response there are a significant number of existing fences in the vicinity of that for which retention permission is not sought. It is stated that c.80 percent of the roadside of the R344 is fenced and from an inspection of the area I would not dispute this figure. The proposed development would not therefore constitute a new or particularly notable feature in this landscape. In terms of visual impact, the first party has submitted a detailed landscape and visual impact assessment which concludes that the overall magnitude of change to the landscape character of the area is no change and that the effect on the landscape character is neutral. The visual assessment states that the scale of development erected is visually inconspicuous and that it maintains the visual openness of the landscape.

8.2.3 The development is clearly visible from the R.344 however as set out previously very significant stretches of the R344 and other roads in the general area are characterised by similar fencing. Clear views of the landscape are not impacted by the development and I would agree with the first party assessment that there is not any discernible impact on landscape character arising on foot of the development. Longer range views from the R344 towards the western and northern sections of the fencing are imperceptible given the separation of these sections of fence from the road. The open character and scenic nature of the landscape is not in my opinion affected for viewers using the R344 and for this reason I do not consider that the development is contrary to Objective LCM1 of the development plan. From my inspection of the plan, no views identified in Map FPV1 are impacted by the erection of the fencing and I do not therefore consider that Objective FPV1 is contravened by the development.

8.2.4 In terms of potential impacts on rights of way and walking routes there are no such routes that traverse the area that are enclosed by the fence which is the subject of this application. No future routes are identified in the development plan that may potentially be impacted by the development undertaken. I do not therefore consider that the development undertaken has a negative impact on the recreational amenities of the area or its potential for tourism and so not therefore consider that it is contrary to Policy PRW1 of the plan relating to rights of way or Objective RA6 regarding walking routes.

9.0 Conclusion and Recommendation

The development for which retention is sought is consistent with the established use of the site for sheep grazing is similar to other fences in the area. It is not likely to have a significant effect on the SAC in which it is located, or on any other European

site. The proposed development would not have a negative impact on the scenic character of the area, or upon its potential for recreational use and it is therefore considered that the development is in keeping with the proper planning and sustainable development of the area.

Having regard to the above, it is recommended that permission be granted based on the following reasons and considerations and subject to the attached conditions:

REASONS AND CONSIDERATIONS

The proposed development would be in keeping with the established use of the site for the grazing of sheep. Subject to compliance with the conditions set out below, the proposed development would not have a negative impact on the scenic character of the area or its potential for recreational amenity. The proposed development would therefore be in keeping with the proper planning and sustainable development of the area.

In completing the screening for Appropriate Assessment, the Board accepted and adopted the screening assessment and conclusion carried out in the Inspector's report in respect of the identification of the European sites which could potentially be affected, and the identification and assessment of the potential likely significant effects of the proposed development, either individually or in combination with other plans or projects, on these European sites in view of the site's Conservation Objectives. The Board was satisfied that the proposed development, either individually or in combination with other plans or projects, would not be likely to have a significant effect on European sites Nos. 002008 (Maumturk Mountain SAC) and 002031 (Twelve Bens / Garraun Complex SAC), or any other European site, in view of the conservation objectives of these sites.

CONDITIONS

1. The development shall be retained in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 8th day of March 2016.

Reason: In the interest of clarity.

Stephen Kay
Planning Inspector

28th September, 2016