



An
Bord
Pleanála

Inspector's Report

PL 15.246577

DEVELOPMENT: -

Open storage area for steel products/materials and all ancillary development works at Greenore, Co. Louth.

Planning Authority:

Louth County Council

Planning Authority Reg. No:

16/114

Applicant:

Greenore Port Ltd.

Application Type:

Permission

Planning Authority Decision:

Grant

Third Party Appellant

Greenore Residents and Tidy Towns Ltd.,
Laurence K. Lennan

First Party Appellant

Greenore Port Ltd.

Type of Appeal:

Third Party v Grant &
First Party –v- Condition
(Section 48)

Observers:

None

Date of Site Inspection:

22 June 2016

INSPECTOR:

Patricia Calleary

1.0 INTRODUCTION

PL 15.246577 relates to **2 no. third party appeals** against a decision by Louth County Council to grant permission to Greenore Port Ltd. for an open storage area of c.1.94 hectares (for storage of steel products/materials) together with ancillary site development works to include topsoil stripping and placement into a berm along the eastern boundary, fencing, lighting and provision of stone surface finish from material dredged from the ports berths, all on lands at Greenore in County Louth.

It also relates to **a first party appeal** by the applicant against Condition No.14 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.1.94 Ha is located within the development boundary of Greenore village which itself is located at the top of the Cooley peninsula in Co. Louth.

The site comprises of an open field, which is relatively flat and is currently growing corn. It is bounded by a large steel framed industrial building (Panpak Ltd) to the west and Carlingford shoreline to the east. Lands to the north are also laid out as an open field on which planning permission was recently granted by the Board for a similar development of open storage of steel under PL15.246093. There is a small area of land to the south (c. 1ha) on which there is a telecoms mast erected and to the south is Hanlon transport complex as well as an area which is in use for open storage in connection with the port. There are 3 high voltage electricity poles with overhead connecting lines traversing the site.

Current access to the site is from an existing private road located off the R175, which it is stated in the Traffic and Transport assessment report is in the ownership of Greenore Port Ltd. though shown as a wayleave on the site location/landholding map which accompanies the application. At the access point onto the 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 itself comprises a small number of unique Victorian buildings including some redbrick terraces as well as a golf course and

deep water port. Euston Street connects the village to the R175 and the R175 follows north as Shore road to Greenore port.

3.0 PROPOSED DEVELOPMENT

It is intended that the site would be developed as an external storage area for steel cargos. According to the drawings and documents submitted, the development proposal would constitute the following:

- Removal of grass layer and topsoil which would be used to create an embankment on the east of the site;
- Laying a geotextile membrane and the placing of crushed rock/stone from recent breaking and dredging from the ports berths as a hardcore finish to a depth of c.250mm;
- Install lighting and a 2.45m high galvanised palisade fencing along the southern and northern boundaries although it is stated that the fencing of the northern boundary will not be required if P15/496 is permitted. [Note: This has since been granted permission by the Board under appeal ref: PL15 .246093].
- A private access road serving the storage area which would have an unbound surface.

It is proposed to leave a 10-15m buffer between the site perimeter and shore to the east. It is stated in the documentation accompanying the application that a larger storage area per ratio of product is required to meet legislative changes for storage of steel. It is also stated that the bulk of what would be stored would comprise reinforcing steel and mesh but would also include manufactured steel products such as wind turbine components. The applicant requests to be allowed flexibility to store other cargo products into the future, perhaps with agreement in advance with the Planning Authority.

In addition to the drawings, the application was accompanied by a cover letter, a Traffic & Transportation Assessment and an Appropriate Assessment screening report.

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 4: Details of bunded areas to be submitted prior to commencement.
- Condition 5: Details of palisade fencing to be submitted prior to commencement;
- Condition 11: Developer responsible for cost of road/footpath cleaning.
- Condition 13: Archaeology – pre-development testing;
- Condition 14: - Development Contributions.

4.1 Planning report by Planning Authority

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

- Site is designated as industrial under the Louth County Development Plan 2015-2021.
- PA consider uses should be restricted to those set out on the public notice (storage of steel products/materials);
- Summary of 5 submissions/observations provided;
- DAHG recommend pre-testing due to proximity to site of interest (LH009-012)
- In terms of design, scale and form, the development has limited visual impact;
- Details of paladin fencing and topsoil bund at east of site have not been submitted;
- No protected views at this site;
- Site would not be readily visible from the public road or other properties. It is located to the rear of the Panpak building which is bulky in scale;
- Reference made by third parties to 'The cuttings' which is stated to be included within blue line. It remains unclear what area this refers to but it is likely to be linked to lands zoned amenity under the current CDP. Site does not include these amenity lands;
- AA Screening – As there is no direct habitat take, no significant adverse effects on the Carlingford Lough SPA;
- Traffic assessment report submitted – Infrastructure section were satisfied with the level of detail;

- Development contributions were based on total lands used for storage with an allowance of 50% reduction for authorised expansion;

A recommendation to **grant permission** issued.

4.2 Submissions/Observations

5 no. third party submissions were received by the Planning Authority from: Fergal McGrane, John Daly, Greenore Residents Association, Patrice Foley & Lawrence Lennon and Thomas McGrane. The following is a summary of the collective concerns raised.

- Blue line boundary incorporates an area known as ‘The cuttings’ shown as being in the applicant’s ownership which is incorrect;
- Applicant proposed to remove an existing hawthorn hedgerow, requests new hedgerow to define northern boundary;
- Concerns that the proposed development would impact on Carlingford Lough SAC/SPA; AA Screening report is deficient;
- No noise level measurements at the existing yards are detailed;
- Surface water disposal not sufficiently addressed;
- Proposal to use crushed rock from recent breaking and dredging from the port’s berths has not considered whether the material is contaminated by Poly-Chlorinated Biphenyls (PCBs);
- Stage 2 AA and NIS required; PA failed to carry out the required screening;
- Storage area should be restricted solely to steel products/materials only;
- Large volume of HGVs using the road network which needs to be considered;
- Request that cumulative impact of the current and previous application (15496) be considered;
- Justification on need for additional storage because of regulatory changes has not been specific;
- Geese are an endangered species which have not been considered;
- Concerns that the heavy industry is restricting growth.

4.3 Interdepartmental reports

- Environmental Compliance - No comment regarding the development;
- Infrastructure - No objection subject to conditions;

- Heritage Officer – No response on file;

4.4 Prescribed Bodies

- DAU-DAHG: Proposed development is adjacent to the site of a flint scatter of archaeological interest (Sites and Monuments Record No. LH009-012) – pre-development testing condition recommended;
- Loughs Agency (Derry) – No response on file;
- An Comhairle Ealaíon – No response on file;
- An Taisce – No response on file;
- Heritage Council – No response on file;

5.0 PLANNING HISTORY

- **PL15.246093/ 15/496** – **Permission granted** on appeal for topsoil stripping and placement into perimeter berms with perimeter fencing. Stone surfacing for open storage of port cargoes such as reinforcing steel and mesh at lands to Northeast of Panpak, Greenore, Co.Louth. [Note: Site lies immediately north of the current appeal site].
- **PL15.243191 / 13/241** – **Permission granted** on appeal for the construction of ferry terminal facilities adjacent to Greenore Port.
- **PL15.239221/ 10/501** - **Permission granted** on appeal for security fence around the perimeter of the port storage area at Greenore Port itself.

6.0 THIRD PARTY APPEALS

Third party appeals were lodged by 2 parties (Greenore Residents and Tidy Towns Ltd., Laurence K. Lennan).

The principal grounds raised in the appeals are summarised under as follows:

- Large volume of HGVs using the road network travelling at speed;
- Request that cumulative impact of the current and previous application (15496) be considered;
- Brent geese have not been considered;
- Justification on need for additional storage because of regulatory changes has not been specific;

- The 4 ‘bungalows’ have impressive architectural heritage and should not be subjected to a steel yard across the road;
- Insufficient detail on proposed fencing;
- Questions the rationale behind the reduction of 50% applied to the development contributions;
- Concerns regarding archaeology and its location;
- Dust issues arising causes nuisance to residents of the Bungalows;
- Traffic movement counts are not aligned with figures experienced by one appellant; Traffic impacts not fully assessed;
- Issues of heritage, pollution, environment, light, flooding not considered;
- Development will adversely impact on the sustainable growth of Greenore village and community. (As such Policies RD3 and RD18 are relevant);
- Paramount consideration should be given to the residential character and amenities of such designated settlements;
- AA screening report insufficient. Fails to consider the cumulative impact of the current proposal and adjoining site; Assessment fails to adequately address poly chlorinated biphenyl;
- Concerns re: nature of materials to be stored. Should be assessed and third parties should not be excluded;
- Impact on Greenore ACA; conservation officer’s opinion should have been sought;
- Absence of a comprehensive port plan (masterplan);
- No capacity deficit based on CSO information whereby a 42% reduction of materials handled through the port has occurred since 2006;
- Blue line boundary incorporates an area known as ‘The cuttings’ as being land in the applicant’s ownership which is incorrect;
- Development would be detrimental to the development of tourism.
- Previous non-compliance issues raised.

7.0 RESPONSES TO THIRD PARTY APPEALS

7.1 Response by Planning Authority

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

- The planning authority considered the recent adjoining development proposal and permission decision;
- In screening for AA, the PA considered the issues of habitat removal in the context of conservation objectives of the Natura 2000 sites; Following screening by PA, the effect on the Natura 2000 sites was concluded to be insignificant;
- Site is located outside of the ACA and is separated by a field to the north;
- Low visual impact will result and the steel may not be visible from the adjoining road;
- PA satisfied that there are no outstanding issues with regard to planning compliance on recent development by Greenore Port.
- Justification for reduction of levies provided – relates to reduced contribution for expansions to authorised industrial and manufacturing operations.

7.2 Response by First party

A response the 2 third party appeals was submitted by the first party. At the outset the first party expresses disappointment with the appeal which is for an alternative site to that previously appealed under PL15.246093 in which the appellants referred to other potential sites should have been considered.

The principal points made in the response are listed under:

- 2013 National ports policy issued by the DTTS supports the development of Greenore port;
- The 2015 County Development Plan also supports the development. (Refers to Policy TC41);
- Proposal on lands which are zoned for industrial use under the 2015 Louth CDP;
- Minimal visual impact would result;
- Site is located outside of any flood zone (A or B) and has no history of flooding;
- Recorded National Monument – No. LH009-012 (pre-historic lithic scatter) is located on the development site;
- Proposal will not negatively impact on tourism or local economy;
- Development will not impact on the built/natural heritage of the area;

- The industrial heritage centres on the port. The continued operation is reliant on the applicant's ability to provide facilities and infrastructure required to operate a successful commercial port;
- Contributes strongly to economy with 15 full time employees and 23-part time employees. 7 new employees were hired in the past year and that the port supports economic development directly and indirectly in the region including 40 hauliers; Port has invested €1.7 million in an R&D facility, OpenHydro, who will have 100 people employed at Greenore Port;
- 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;
- Sight distance of 70m has been provided in both directions at 2.4m setback from the road edge in compliance with NRA guidance;
- The findings of AA Screening report are that the development would 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.

7.3 Further Response by Planning Authority

The PA stated that they have no comments on the first party response to the third party appeal. They also stated in separate correspondence that they had no further comment in relation to one third party's further response.

7.4 Further Response by Third Parties

Responses were received from the 2 third parties, i.e. Laurence K. Lennan (2 responses received within the statutory timeframe) and Greenore Residents & Tidy Towns Ltd. on the first party's response to their appeal. The responses re-iterated issues and concerns raised in the initial grounds of the appeal. The following new relevant planning issues were also put forward.

- Concern that applicant applied for 2 sites including this current appeal site;
- Industrial history and heritage is not solely centred on the port;

- Disputes the employment figures;
- Brent geese and other birds regularly congregate on the site and disputes that they will simply relocate;
- Heritage of Greenore needs to be protected due to previous loss of railway and hotel;

7.5 Further Response by First Party

The applicant responded to Mr. Lennan's further response and also makes reference to the recent decision by the Board to grant permission for a similar development on an adjoining site on 4th July 2016.

The response re-iterates previous responses and re-inforces the port's continued operation is dependent on the provision of infrastructure.

8.0 FIRST PARTY APPEAL

The first party lodged an appeal against condition no. 14 on the basis that the development contribution scheme has not been properly applied.

The elements of the contribution attached under Condition No.14 is as follows:

a. Road Improvements =	€3,898
b. Surface Water drainage =	€73,628
c. Recreation and Amenity =	€7,426
TOTAL	= €164,952

The main grounds of the appeal are summarised as follows:

- Contributions levied are not supported by the Councils scheme which does not specify a rate for 'open storage';
- PA incorrectly levied development contributions for surface water that has not been provided to serve the particular development;
- PA charged for water even though water supply has transferred to Irish Water;

In support of the appeal, the following specific points are made.

- In the record of executive business & managers order which formed the basis for the calculation of contributions on the appeal case, there is only reference to 'warehouse/**open space**' and **not** 'open storage'. (Note: An extract of the manager's order is

inserted and I have provided a copy of the manager's order in the appendix to my report);

- Contribution for warehousing (floorspace) would have significantly greater demands in respect of infrastructure than the open storage area proposed. The application of contributions based on warehousing/open space would be inequitable;
- As no reference to 'open storage' in the Councils contribution scheme, it should not be open to the Council to attribute a different category or rate of contribution on to the development;
- Condition No.14 clearly states the reason if for ***'the provision of each of the public services listed below, which will facilitate the proposed development'*** even though each of the services listed (water and surface water services) are not being provided;
- Surface water will be disposed on-site and will not be connected to any public surface/storm or water supply. No contribution charge should therefore apply for surface water;
- Refers to Planning Authority's response to previous appeal (PL15.246093) in which it is stated that the development contribution scheme is not worked on a site by site basis. States this is not correct as contributions must be apportioned to developments which reflect the cost of public infrastructure to facilitate that particular development;
- Contributions levied are contrary to DECLG's 'Development Contributions Guidelines for Planning Authorities';
- Despite water supply being transferred from Louth County Council to Irish Water, there is no commensurate reduction in the development contribution charges levied by the Council;
- Considers contributions imposed are excessively high and would discourage economic development;
- Development contribution should be reduced by €73,628 (amount attributed to water and surface water services), i.e. from €164,952 to €91,324.

9.0 RESPONSES TO FIRST PARTY APPEAL

9.1 Response by Planning Authority

- The benefit of the surface water drainage scheme are not set for each site but rather for the county as a whole and that surface water contributions 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. Same argument

could have been made for the recreation & amenity element applied but was not included;

- 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;
- Contribution scheme makes no reference to '**Open Storage**'. '**Warehouse/Open Space**' classification is the closed to that referenced but this would not be appropriate;
- 50% reduction was applied to support expansion of authorised industrial operations - as per Table 3 - Reduced Contributions;
- Louth County Council have used an appropriate class of industrial/ manufacturing retail/ warehousing/ commercial/ agricultural store (commercial) for the calculation of levy;
- The Development Contribution scheme requires that all proposed developments contribute towards a county wide public infrastructure and surface water scheme.

9.2 Further Response by first party

- PA's response does not deal with the fact that the contributions are not supported by their own development contribution scheme.
- Application proposal does not fit with the applied category (industrial /manufacturing/retail warehousing /commercial / agriculture store – commercial);
- Development contributions are to be levied on a 'per sq.m' basis based on floorspace and not on a total or proportionate site area basis. References other permissions granted by the Planning Authority stating the contribution scheme was applied on this basis;
- States that there is no definition of 'gross area' in the contribution scheme and therefore the definition should be synonymous with the term 'gross floor space' used in the planning regulations;
- By definition, the 'per sq.m gross area' should not include external storage area;
- Lacks clarity and transparency contrary to the intention of applying development contributions;
- 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 (€73,628) is not warranted.

10.0 OBSERVATIONS

No observations were received on this appeal.

11.0 POLICY CONTEXT

11.1 Louth County Development Plan 2015-2021(CDP)

The proposed development is governed by the policies and provisions contained in Louth County Development Plan 2015-2021. The site is zoned as **industrial**. It is located within a **Level 4 settlement**, which are the smallest category of settlement (villages) in County Louth.

The following extracts from the CDP are considered relevant.

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.

Policy EDE 14 - To comply with development management guidelines for industrial and commercial developments as set out in Section 6.3 above unless otherwise provided for in a local area plan.

Section 6.1 – The M1 also provides rapid access to international airports at Dublin and Belfast. Additionally, Louth boasts three commercial freight ports, namely Drogheda, Dundalk and Greenore.

Architectural Conservation Area (ACA) and Protected Structures

The ACA boundary includes the bungalows on the southern outskirts, Euston Street, Anglesey Terrace and the coastguard houses. The site is

not located within the ACA. 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 (Site code 002306) and Carlingford Lough SPA (Site code 004078).

Development Contributions

Development Contribution Scheme 2010-2014

Record of Executive Business and Managers Order No. 024/141A

12.0 ASSESSMENT

12.1 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 which relate to the third party appeal and also encapsulates my *de novo* consideration of the application. In addition, it also covers my assessment of the first party appeal v Condition No.14 (Section 48 appeal).

At the outset, I mention that this site is located immediately adjacent to (south) of a similar site which was very recently granted permission by the Board under PL15 .246093 (PA ref -115/496).

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

- 1. Principle of the development**
- 2. Traffic and Road Safety**
- 3. Impact on Greenore Village including ACA and Heritage.**
- 4. Residential amenity**
- 5. Flood Risk**
- 6. Appropriate Assessment**
- 7. Other – Uses, Tourism, Reference to ‘The Cuttings’**

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 also submitted that the provision of the additional storage area is critically important for the business of Greenore Port which it is stated makes an important contribution to the area.

12.2 Principle of the Development

The applicant states that the main reason for the proposed development is to provide additional storage space for steel material/products in line with both an expected increase in port activity and as a result of legislative changes for the storage of steel. It is also stated that the development itself would not lead to any direct increase in steel product or associated increase in traffic demand. Third parties dispute this rationale stating that the applicant has not referenced the specific legislation and that the port was handling significantly more material prior to the recession than it is currently.

Within the **2013 National Ports Policy by DTTS**, objectives aim to increase the contribution of the marine sector to the overall economy. Greenore port is categorised as a port of 'regional significance'. Louth County Council also consider the port to be of strategic importance of Greenore Port.

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

Policy TC 41 of the Louth County Development Plan 2015-2021 is supportive of the development and the expansion of ports, including Greenore port subject to the preparation of a masterplan and compliance with EU policies. I concur with the appellants that a masterplan would have been of assistance in this instance as it would serve to inform the overall intention for the port development. This is particularly so in the context of a planning application granted for a similar development to the north of this appeal site. However, I do not consider that the absence of a masterplan would constitute a reason for refusal as each application would be required to be assessed on its own merits.

The planning policy as set out in the current Louth County Development Plan 2015-2021 clearly supports the proposed development. The site zoning clearly provides for industrial development and I consider that the external storage of steel cargos fits this category.

In conclusion, I am satisfied that the proposed development on a site zoned 'industrial' aligns with applicable planning policy. 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 the main other planning considerations raised, I will deal with these under the respective headings which I have listed in my introduction to my assessment under Section 12.1.

12.3 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 to the area. The applicant submitted a Traffic and Transport Assessment (TTA) prepared by MHL Consulting Engineers. It is stated that traffic counts were carried out on 5 November 2015 between 7.30-9.30 and 16.30-18.30 at the R175/Euston St. and R175/R176 Priority T junctions (south of R175) and separately an automatic traffic counter was used for a week commencing on 31 October 2015. It is also stated that an automatic counter was also used between the R175/R176 junctions for the same period. The position of the traffic count locations is shown on Fig 2.1 of the Traffic Impact assessment report.

The assessment was 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 which were greater than the numbers recorded in the traffic counts. It assumes for the purpose of the assessment that all of the cargo would be transported to the storage area now proposed.

Its main conclusions are that both R175/Euston St. and R175/R176 Priority T-junctions are operating well within capacity for the future design years up to 2031. It is stated that the access junction to the site will have very low volumes and as such would not require a capacity analysis or any modifications.

In the response to the grounds of the third party appeals, 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 reinforcement steel. As such it is submitted that the storage in itself would not generate any additional traffic to and from the port.

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. I also note the trucks movements from the port to the site would be via the R175 and Shore road without passing through the core of the village.

On the day of my inspection, I noted the R175 was well trafficked with HGVs shunting steel from the port to an existing storage area proximate to the appeal site and with HGV movements associated with other transport and warehousing businesses in the area (including Panpak Ltd and Hanlon Transport Ltd). 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 given the capacity that is deemed to be available on the road network, I consider the development should not be refused on traffic hazard or road safety grounds.

12.4 Impact on Greenore Village including ACA and Heritage.

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 be detriment to the heritage of Greenore to permit a steel yard across the road from 4 'bungalows' or coastguard houses which have impressive architectural heritage. The point is made that these houses are all protected structures and are contained within the Greenore Architectural Conservation Area (ACA).

In response, the first party submits that the storage area immediately adjoins existing industrial areas and is remote from any conservation areas, protected structures or monuments.

Having reviewed the applicable Louth County Development Plan 2009-2015, I note that the proposed development lies outside of the Architectural Conservation Area (ACA). It is located in an industrial area, remote from the ACA or any of the 42 listed protected structures, most notably the 4 Bungalows, where the separation distance measures c.170m. I note that the appeal site is located partially to the rear of the Panpak building which is a large steel framed building and partially to the rear of the recently permitted site also for open storage of steel (Ref: PL15.246093). There are no buildings proposed as part of the intended development and the perimeter berms proposed would be low. There would be a restriction of storage height to a maximum of 2.45m imposed by planning condition, which I also recommend should be repeated if permission is granted.

The appellants refer to a national monument – LH 009-012 (a 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 the requirements of the Department of Arts, Heritage and the Gaeltacht and that a condition of this nature should attach should permission be granted.

I 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 that the open storage development now proposed would not impact on the built heritage of the area or the ACA for Greenore.

12.5 Residential Amenity

Concern is raised that the development would result in an adverse impact on the Bungalows in particular (noise, dust and litter) predominately from the increase in HGVs shunting steel from the port to the proposed open storage area passing by the houses each time. Concern is also raised about the impact which the proposed lighting may have on the houses and that overall it would be diminish the residential amenity currently enjoyed by the residents.

I am satisfied, given the low height of the material proposed to be stored, together with appropriate landscaping and the separation distance that the proposed development would not impinge on the residential amenity of the protected structures proximate to the site. In addition, its visual impact in the context of other industrial building and

that which was recently permitted under PL15.246093/ 15/496 would be very low.

I fully acknowledge that the operation currently involves HGV traffic passing in front of the 4 Bungalows along the R175 and other individual houses on Shore road and Euston Street which could result in associated traffic noise and vibration. However, it is stated that the level of traffic will not increase as a result of the development and that traffic volumes being handled are less than the pre-recession times. Given the current level of use on this road by the operation of the existing port, the impact of the proposed development in this regard would be unlikely to be significant. In relation to dust, I accept this is likely to occur on dry days in particular but this can be mitigated against with good management, including cleaning of trucks and dousing with water to minimise dust, prior to leaving the site.

In conclusion, I consider that permission should not be refused on the issue of residential amenity for the reasons I have outlined above.

12.6 Flood Risk

The appellants state that a flood risk assessment should have been submitted and support their claim with the Greenore composite map within the Louth CDP. I note immediately that there is an area south of the appeal which is marked as 'Flood Zone A' on this map. The appeal site itself is not shown as being in a flood risk area. 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 note that the Local Authority infrastructure section raised no objection on flooding grounds. The Planning Authority were also satisfied that there were no flood risk issues and accordingly there was no request for a flood risk assessment. I am equally satisfied, having regard to the nature of the development, to the location outside of a flood risk area, that there are no flood risk issues pertaining to this appeal site or development proposal and that the development should not be refused on grounds of flood risk.

12.7 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 where third parties can also be included. 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.

Tourism:

The appellants refer to the Greenore-Greencastle ferry service proposed which would link the Mountains of Mourne and Cooley peninsula benefiting tourism in the area. I disagree with the appellants that the external storage development could undermine the delivery of tourist facilities. There is simply no evidence to support this claim.

Reference to 'The Cuttings'

In relation to the area referenced by the third parties as 'The Cuttings', no map was presented of the area and the Planning Authority consider it is located elsewhere, outside of the appeal site.

12.8 Appropriate Assessment

The appeal site is located east of two Natura 2000 sites, Carlingford Shore SAC (Site code 002306) and Carlingford Lough SPA (Site code 004078).

A Stage 1 Appropriate Assessment screening report has been undertaken by Breffni Martin which was enclosed with the planning 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, vibration and visual disturbance from trucks and operations may disturb Brent geese using SPA;
- Loss of feeding habitat for Brent geese.

Concern is raised by the appellants that the surface stone to be used sourced from dredged material would be contaminated with Poly-Chlorinated Biphenyls. The stone material would be an inert material there is no evidence it would contain such contaminants. The use of the material has been considered in the appropriate assessment screening.

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

- Minimise dust and construction material from blowing onto designated sites on very windy days (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;
- Placement of a berm and grass buffer are of at least 10m between the shore and the development site.

It is also submitted in the screening report that pale-bellied Brent geese are unlikely to use the 2 Ha development site for grazing as they feed on grass where the sward is low (c.5 cm) whereas the subject site is one where crops are rotated. Other reasons are also stated why the site is not suitable for Brent geese which includes the site being proximate to high obstacles. Panpak building is stated as an existing obstacle as it is

located on the windward side which is normally the side where Brent geese fly when taking off. The field is crossed by high voltage overhead lines and poles which are stated to inhibit visibility for a fast take-off. It is submitted, that the Brent geese are unlikely to utilise the appeal site, and that even if they would use it, its removal for development would not have any significant effect on the 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, having regard to the nature, location and scale of the subject development, and in the light of the mitigation measures set out in the applicant's Screening Report, which would constitute normal construction practice, that the construction of the proposed development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on the Carlingford Shore Special Area of Conservation (Site code 002306) and the Carlingford Lough Special Protection Area (Site code 004078) or on any other European sites, in view of their conservation objectives. I am satisfied that a Stage 2 Appropriate Assessment (and submission of a Natura Impact Statement) is not therefore required.

13.0 Section 48 appeal by first party

The first party lodged an appeal against condition No. 14 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 under Condition No.14 are as follows:

- a. Road Improvements = €83,898
 - b. Surface Water drainage = €73,628
 - c. Recreation and Amenity = €7,426
- Total = €164,952

The use category applied was that of **'Industrial / Manufacturing / Retail Warehousing /Commercial/ Agricultural Store (Commercial)'** and the methodology employed for the calculation of the monetary amount was based on the applicant's stated 7900 sq.m net site storage area. The applicants argue that the scheme was incorrectly applied, particularly that there is **no use category** for **'open storage'** in the County Louth development contribution scheme. It is also submitted that there would be no additional demand for the provision of surface water infrastructure and so a **surface water contribution should not have been applied**. The applicant contends that a charge was also applied **for water** which is **incorrect** given that water infrastructure is no longer a function of the Local Authority.

The Planning Authority responded stating that **surface water contributions are not worked out on a site by site basis** and that the surface water element of the scheme could be warranted for the benefit of public roads outside of Greenore. 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 that **no charge for water** was applied as part of Condition No.14.

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 make it clear that a **50% reduction was applied** to support economic development in line with Table 3 of the scheme.

In their subsequent correspondence to the Board, the applicants stated that as there is no building proposed, it was **incorrect to apply contributions on a site proportion basis**. They argue that this is contrary to the stated 'gross area-sq.m' basis set out in the contribution scheme which infers a building gross floor area. They also dispute the Planning Authority's argument that the provision of 'surface water services' contributions should attach on a county wide basis and for roads drainage which they state is already covered under the separate element of €91,332 contribution for roads.

In my consideration of this appeal, I note a number of anomalies exist in the scheme which have led to some confusion. At the outset, I am clear that there is no category for the proposal, i.e. the development of a site

and its use for external open storage of steel. I also consider that there is no provision to arbitrarily apply a levy on a site proportion basis when the methodology is clearly intended to be based on the gross floor areas of a building (where one is proposed).

The original adopted scheme has a listed category for **'warehouse/open storage'**, however the Planning Authority stated there was no category for 'open storage'. It seems that the word 'storage' was changed, perhaps in a clerical error to read 'space' in the subsequent manager's order. The reason I consider it may have been a clerical error is that the adoption of the development contribution scheme is a reserved function and the thrust of the manager's order solely served to change the way the scheme would be implemented by removing the element for water and wastewater when these functions transferred to Irish Water. 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 development based on the net area of the site on which the steel product would be stored.

Where the applicant contends that the figure for 'water and surface water' was not adjusted in the manager's order to reflect the removal of the water element, this is not the case. The applicant is referring to the **'Open Storage'** use classification with a reduced figure of €9.32 whereas the Planning Authority applied the reduced 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 classification¹ is the same as the original figure in the **'Warehouse/Open Storage'** classification.

I am satisfied that the 'water' figure has been removed as per the manager's order and that the applicant is not being charged for 'water' under the applied use classification. Accordingly, this element of the appeal argument cannot be sustained.

In relation to whether or not surface water contributions apply, it is of relevance to note that Section 48 of the Planning and Development Act 2000, as amended, sets out that contributions can be applied for the provision of public infrastructure and facilities that **benefit** a

¹ Industrial Manufacturing / Retail Warehousing / Commercial /Agricultural Store (Commercial) use classification.

development. Development contributions are calculated on a county wide basis during the preparation of a scheme but the subsequent application of a scheme is based on infrastructural usage for specific developments. Regarding the Planning Authority's reference to surface water benefiting roads, I am satisfied that a contribution for roads has already been applied under the roads contribution in part (a) of Condition 14 which would include road drainage. It is not necessary or appropriate to also apply road drainage as an additional surface water charge as it would lead to an element of 'double charging', which would be inconsistent with the primary objective of levying development contributions as set out in the planning legislation and the Development Contribution Guidelines (DECLG 2013). Step 3 of the recommended methodology for applying contributions within the DECLG guidelines is particularly relevant in considering this point as to whether or not a surface water contribution should be applied. Within the **residential category**, it advocates for a single rate per dwelling (to offset the rural and urban difference in service provision) and of relevance to this case, a very different approach for non-residential categories. It specifically states *'the intensity of infrastructural usage by different categories (of for example employment related activity) should be taken into account'* for **non-residential categories** within which I am satisfied the current proposal fits.

Having considered Section 48 of the Act as expanded by the guidelines, I cannot at all agree that a 'surface water' contribution is warranted in this case as the development, which is a non-residential category, does not propose or require to use the public surface water network.

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 current proposal. The adopted parent contribution scheme bases its contributions on sq.m of gross area. In appendix B of the scheme, it references **gross area** under **footnote 1** as meaning **'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'*. I consider that open storage within the classification 'warehousing/open storage' is meant to mean the gross floor area inside of a warehouse or similar open storage building, being buildings which are most often laid out internally as large open spaces to accommodate bulky goods.

Clearly, in this development, there is no building proposed on the site and hence no gross floor area to measure. Q.13 of the planning application form has **N/A** marked under **gross floor area**. The scheme

makes no reference to the use of a proportion of the site area as an alternative to gross floor area of a building. While it might ordinarily be reasonable to apply a contribution to a development of this nature, the adopted scheme does not provide for such a contribution for the development of external storage on a site based on a site proportion measurement. By way of comparison, development contributions are not normally applied to external yard space, for example storage of fertilizer or fuel on a hardware or builder's providers yard external to a building unless such external site areas are included in an adopted scheme which they are not in this case. The applicant has also provided a comparison whereby if they had proposed a small building on site, they would expect contributions would attach based on the buildings gross floor area only and not the additional external site area. I consider that where there is no building proposed as part of this development, it would not be reasonable to use a stated net site area as an alternative to **gross floor area**, which is defined in the scheme as referring to the **'floor area of a building.'** It is of interest to note that the scheme does include for other specified development based on site area, namely quarries, golf courses and forestry but of relevance to this appeal, it doesn't include external open storage. I also mention that the net storage area stated by the applicant would take up only 40% of the gross site area which appears to be low in comparison to the existing external storage areas used to store steel cargos at Greenore.

There is a statutory requirement that contributions are applied to development in accordance with the adopted scheme. The DECLG guidance advocate for consistency and clarity in relation to the application of development contribution schemes so as to inform decisions before development investments are made. The guidance also sets out that contributions should be linked with the infrastructure being provided, stating:

*'one of the outputs of the new guidance should be a greater level of **consistency** in development contribution schemes on a national basis providing enhanced **clarity** to inform investment decisions across different local authority areas' and that 'It is equally important that clear **linkages** are demonstrated **between the contributions collected, infrastructure provided** and thereby development plans and local area plans being implemented.'*

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 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 that under a similar development by the same applicant (PL15.246093), which was also appealed, the Board considered that the category 'warehouse/open space' was the applicable category and that contributions, including surface water, did apply at the reduced rate. I also acknowledge that a 50% reduction was applied in this case by the Planning Authority which I consider is correct where contributions are applicable.

In conclusion, I firstly advise the Board that I consider there is no stated provision within the Louth Contribution scheme 2010-2014 as updated for the levying of financial contributions for external storage as now proposed. I also consider that the methodology is intended to use gross floor area of a building and not a site area or proportion. Accordingly I recommend that no development contributions should attach to any grant of permission.

Should the Board differ from my view and decide that contributions are in fact applicable, I consider that, having regard to the requirement to be linked to intensity of usage within the non-residential category of the scheme, that a contribution for surface water is not warranted as the development does not require a connection to the public surface water network. I consider where contributions would be required, they would be based on the **'Warehouse/Open Storage'** use classification in the adopted scheme as transferred to read **'warehouse/open space'** on foot of the manager's order which in that case would include the following:

Roads: €23.57 x 7900 sq.m reduced by 50% = ~~€3102~~

Recreational + Amenities: €1.88 x 7900 sq.m reduced by 50% = ~~€7426~~

Total = ~~€100527~~

14.0 CONCLUSIONS AND RECOMMENDATION

Having regard to my assessment above, 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** should be **granted** for the proposed development in accordance with the following draft order. I also recommend that Condition No.14 should be omitted on the basis that the applicable

development contribution scheme was not properly applied in this instance.

REASON AND CONSIDERATIONS

It is considered that, subject to compliance with the conditions set out below, the proposed development located in an area zoned industrial would be appropriate and would comply with Policy TC 41 of the planning authority, as set out in 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 likely be generated as a direct result of the development, it is considered that the proposed development would be acceptable in terms of traffic safety and convenience. It is also considered that the development would not negatively 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 that the proposed development would not seriously injure the residential or visual amenity of the area and would be in accordance with the proper planning and sustainable development of the area.

Development Contributions

There is no stated provision in the Louth County Council Development Contribution Scheme 2010-2014 for the levying of financial contributions in respect of the development of external open storage. Accordingly the Board considered that Condition No.14 should be removed.

Appropriate Assessment Screening

The Board noted the Appropriate Assessment Screening Report submitted by the applicant and the Appropriate Assessment Screening determination carried out by the Inspector. The Board concurred with the Inspector's determination, and adopted her conclusions and recommendations in this regard. The Board was, therefore satisfied, having regard to the nature, location and scale of the subject development, and in the light of the mitigation measures set out in the applicant's Screening Report, which would constitute normal construction practice, that the construction of the proposed development would not be likely to have a significant effect, either individually or in combination with other plans or projects, on the Carlingford Shore Special Area of Conservation (Site code 002306) and the Carlingford Lough Special Protection Area (Site code 004078) or on any other European sites, in view of their conservation objectives.

CONDITIONS

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the Planning Authority, the developer shall agree such details in writing with the Planning Authority prior to commencement of 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 the planning authority 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 details of which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of the development. This scheme shall include the finished details of the proposed berms, perimeter fencing location and height.

(b) Full details of existing and proposed landscaping shall be submitted to, and agreed in writing 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. (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 Department of Arts, Heritage and the Gaeltacht.

(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 Department of Arts, Heritage and the Gaeltacht.

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.

6. The level of illumination shall be submitted to, and agreed in writing with the Planning Authority prior to the commencement of the development and shall be reviewed at any time by the planning authority and any adjustments shall be made to the satisfaction of the planning authority at the developer's expense.

Reason: In the interest of residential amenity.

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.

Patricia Calleary
Senior Planning Inspector
12 August 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