



An  
Bord  
Pleanála

## Inspector's Report PL05. 247239



<b>Development</b>	Set down area for port
<b>Location</b>	Glebe, Killybegs, Co Donegal
<b>Planning Authority</b>	Donegal County Council
<b>Planning Authority Reg. Ref.</b>	16/50946
<b>Applicant</b>	Sinbad Marine Services Ltd
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant permission
<b>Type of Appeal</b>	Third Party
<b>Appellant</b>	Killybegs History and Heritage Committee
<b>Observer</b>	None
<b>Date of Site Inspection</b>	17 <sup>th</sup> November 2016
<b>Inspector</b>	Stephen J. O'Sullivan

## **1.0 Site Location and Description**

1.1. The site is in Killybegs, Co. Donegal. It has a stated area of 0.92ha. It lies immediately beside the enclosed area of the harbour on flat land that was reclaimed at the time the port was expanded to provide the Killybegs Fisheries Harbour Centre which opened in 2004. The site has an unfinished surface of hard core. A wire fence with concrete posts runs along its boundaries, except on its north-eastern side where there is a palisade fence along the road to the harbour. The gate to the harbour stands on this road beside the northern corner of the site. Another road runs along the reclaimed land on the north-western side of the site to a car park. The public have access to this road and car park. Higher land lies immediately to the south of the car park and the appeal site on the other side of the previous shoreline. There is a number of historic structures on that land, including the a holy well dedicated to St. Catherine, at which a shrine has been erected. The ruins of Kit's Castle, a medieval house, lie to the south of the shrine on higher land. The ruins of the medieval church of St. Catherine and its associated graveyard are to the north-west of the shrine on lower land. A footpath provides access to the historic structures from the road and car park on the reclaimed land.

## **2.0 Proposed Development**

It is proposed to operate a set down area for the port on the site. It would involve replacing the fence around the site with a new palisade fence up to 2.6m high, opening an access onto road on the north-western side of the site and realigning kerbs and footpath, as well as the regrading of the site.

## **3.0 Planning Authority Decision**

### **3.1. Decision**

The planning authority decided to grant permission subject to 8 conditions, none of which substantially altered the proposed development.

## **3.2. Planning Authority Reports**

### **3.2.1. Planning Reports**

The site is a large hardcored yard and part of Killybegs port. It is unzoned but part of an archaeological complex. The DAU does not object. The proposed fence and hedging are acceptable. The proposed development would be minor in nature and acceptable to the planning authority. Objections were noted. The presence of the well should not unduly inhibit the development of the port. The set down area would not generate an unacceptable amount of traffic on the road to the car park. Pedestrians would normally use the footpath on the other side of the road. The impact from noise would not be unacceptable. A grant of permission was recommended.

### **3.3. Prescribed Bodies**

The Department responsible for heritage noted the proximity of the development to the zone of archaeological potential are the recorded monuments to the south. It recommended that archaeological monitoring be required by condition.

Inland Fisheries Ireland requested that works be carried out in accordance with their guidance on the protection of fisheries

### **3.4. Third Party Observations**

Submissions were received that objected to the development on grounds similar to those raised in the subsequent appeal.

## **4.0 Planning History**

Reg. Ref. 01/64 – the planning authority granted permission for a harbour development on a site encompassing the current appeal site.

PL05. 246540, Reg. Ref. 15/51173 – On the 25<sup>th</sup> August 2016 the board refused permission for offices, storage and workshop facilities on land immediately to the south of the current appeal site. The reason for refusal referred to the

archaeological complex at St Catherine's Well, and stated that the development would injure the landscape.

## 5.0 Policy Context

### 5.1. Development Plan

The Donegal County Development Plan, 2012-2018 applies. Within the County Settlement Hierarchy, Killybegs is identified as a Tier 2 Strategic Support Town. It is an objective of the Development Plan (CS-O-9) "to support economic growth in the county at key locations of strategic and infrastructural importance as well as high level, large employment generating growth in the Gateway. This will be achieved through (inter alia):

The establishment of the tier 2 settlements of Killybegs and Bridgend as key growth centres for new economic activity. Focus in Killybegs will be in relation to the fisheries and associated industries, harbour related, tourism, oil exploration and as a centre of excellence for renewables and services including investigating the potential of establishing a Strategic Development Zone under Part IX of the Acts for appropriate areas in Killybegs.

It is also a policy of the Council (T-P-26) "...to promote and facilitate the further development and expansion of Killybegs Harbour Centre as a strategically important deep water commercial and leisure port, subject to environmental considerations."

Under E-P-5, it is a policy of the Council "...to become a centre of excellence for research and development of renewable energy technologies including wind, hydro, tidal and wave and specifically to facilitate the development of Killybegs harbour and Donegal Airport as maintenance, service and supply centres for offshore energy facilities in the context of other objectives and policies of this Plan."

The site is within the area of the Killybegs Local Area Plan 2008-2014 where it was zoned "Harbour/Port Activity". The car park and the recorded monuments to the south are zoned for open space/amenity. The eastern part of the site is in a Zone of Archaeological Potential. There are recorded monuments to the west of the site in that zone, namely: DG097-015 Deserted settlement, DG097-01501 Castle site,

DG097-1502: Church and Graveyard, DG097-1503: Holy Well, and DG1504 Castle.

## 5.2. Natural Heritage Designations

The site is not in or near any Natura 2000 site.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

- The appellant's concerns are similar to those upheld in appeal PL05. 246540.
- The site is not suitable for the storage of hydrocarbons as it is too close to the heritage area and pedestrians. It would be visually obtrusive and injurious to the amenity of the area. A site more suitable on health and safety grounds in the centre of the Killybegs Fisheries Harbour Centre should be found.
- The movement of HGVs from the development would pose a threat to pedestrians at the Holy Well and archaeological complex that has not been properly assessed.
- There are no conditions on the size or nature of the storage on the site which would be close to a sensitive heritage area, housing and the public road. The development would threaten visual amenity.
- The access to the site should not be shared with that of the heritage area but should be through the main security gates of the KFHC.
- Noise and nuisance from the development would effect the enjoyment of the recreational and amenity area which is effectively the main town park.
- The local area plan is under review and a petition has been made to zone the land back to open space and amenity use.

## 6.2. Applicant's Response

- The board should dismiss the appeal because there were no objections from the appellant to 20 other planning applications on the same landholding that were also close to the recorded monuments at St. Catherine's Church, Holy Well and Cat's Castle.
- The Killybegs Harbour Fisheries Centre was completed in 2004 and provides the deepest port in the country with 24/7 access. It has c150m of 9m deep berthing and c300m of 6m deep berthing. It was provided mainly for the fishing industry, but now functions as the main port in the north-west for commercial cargoes. It is operated as a commercial port by the Department of Agriculture, Fisheries and the Marine (DAFM). The applicant provides marine support services, including stevedoring. SI210/1969 defines the area of the Harbour Centre. The site was also zoned for harbour use under the 2008 local area plan. The county development plan also supports the development of the harbour, viz. policy T-P-26.
- The KHFC includes concrete area immediately beside the quay and an area surfaced in bitmac to its rear used for temporary set down. Major ports must operate to an international security code, to which end the KFHC is enclosed by a 2.4m fence with a single land access point. DAFM declined the applicant's request for access from the latter's land to the port through the security fence, which is why a new dedicated access road was built to the rear of the KFHC on the DAFM's property but outside the secured area of the port. The applicant secured a 35 year lease on lands including the current appeal site following a tender process, which is part of land developed by DAFM as 'Future Development Sites' and surfaced with hardcore. It is not within the secure area of the harbour and site security is a concern. Its intended operation as a setdown area therefore requires a better fence and new access. It is currently served with foul and storm services.
- There are 3 recorded monuments at Glebe Td. – the castle, the holy well and the church. Access to them is permitted by the property owner along a concrete path. 11 hectares below the high water mark nearby was filled and

developed as the KFHC. It is vested in the Minister for Finance. It includes a new car park that is used by visitors to St. Catherine's Well.

- The bulk storage of hydrocarbons is not included in the planning application. The applicant employs a local distributor to deliver the fuel required by vessels directly to them, with a similar arrangement for the small amounts of diesel required by forklifts.
- The development will not threaten the safety of pedestrians. The KFHC has operated since 2004 without incident to the safety of pedestrians visiting the well. The proposed facility will operate in the same manner as the existing set down areas. Abnormal loads are governed by strict traffic management plans. The use of footpaths by pedestrians is a normal practice and a risk assessment for HGVs on a private roadway is not warranted. The roads and car park were developed here to serve the harbour rather than the archaeological complex. The DAFM will not allow a second access point in the fence defining the secure harbour.
- The proposed set down area will operate in the same way as the existing ones at the harbour and will not be visually obtrusive in the context of a marine port.
- The DAFM did not commit to providing access to the well via its lands to the well, although it allows persons to do so. There is no established right of way to the well from the DAFM's land, although there is one from the other side of the well.
- With regard to noise and nuisance, the lighting for the set down area will be that installed in 2004. The applicant is not aware of any complaints about its operation since then. Traffic noise in the vicinity will be greater than that which arises on the site. It would be unreasonable to restrict the times of operation of a commercial port facility.
- The 2008 local area plan was adopted in line with statutory procedures.
- Letters of support for the proposed development were submitted.

### 6.3. **Planning Authority Response**

The planning authority stated that it had no comment on the appeal.

### 6.4. **Further Responses**

The applicant's response was circulated for comment.

6.4.1. The planning authority's response refers to the grant of permission made under 01/64 and policy T-P26 of the development plan to support the use of the site for port activity as the current application proposes.

6.4.2. The appellant's response can be summarised as follows-

- The letters of support may refer to a previous application
- The archaeological complex is not addressed or described in the report which is not comprehensive or accurate in many regards. The appellant's book on the history and heritage of the site is enclosed.
- Mention of legal rights of way and access is a red herring. The heritage value of the town is significant. The setting of the archaeological complex must be protected and consolidated and preserved as an important resource – one at the heart of Killybegs' great rise and story around its fine natural harbour. The developer's latest report is an affront to the local group's efforts and integrity and potential undermines the planning process and its efficacy and independence. The appellant is a voluntary public and cross community body that utilises the scarce resources and expertise within the community to safeguard and protect its fragile and diminishing heritage resource for current and future locals.
- The two previous appeals by the appellant on adjacent land were successful. If the port is to develop it must do so on a sustainable basis with due regard to the importance of the archaeological and heritage complex.
- The grounds of appeal regarding access to the heritage site are re-stated.



## 7.0 Assessment

- 7.1. The appeal is based on grounds relating to the proper planning and sustainable development of the area. It should not be dismissed under section 138 of the planning act.
- 7.2. The proposed development would support the operation of the port at Killybegs. It would therefore comply with policy T-P-26 of the applicable development plan. It would also comply with the most recent zoning of the site for Harbour/ Port Activity in the 2008 local area plan. It is noted that the local area plan was made before the development plan and that the making of a new local plan is overdue. Nevertheless it provides the most recent set of objectives regarding the use of land in and around the site that was made by the planning authority under the procedures set out in Part II of the planning act. There is no inconsistency between zoning of the site and the provisions of the development plan that was subsequently made. No circumstances have arisen since the making of the local area plan that would support a conclusion that the relevant zoning objectives are now unreasonable and should be set aside. They remain a rational basis on which to determine proposals for the use of land there. The principle of the proposed development is therefore supported by the provisions of the applicable development plan and local area plan.
- 7.3. The roads at the harbour fisheries centre that serve the site were built to the specifications required to accommodate the heavy goods traffic generated by the port. The desire line for pedestrians between the town centre and the holy well would run along the western side of the road to the site. In these circumstances the proposed use of the site and the laying out a wide vehicular access on the eastern side of the access road would not injure the safety or the convenience of pedestrians or other road users. The impact of the proposed development in this regard would not be mitigated by altering the location of the access to a point within the designated boundary of the harbour.
- 7.4. The site occupies reclaimed land below the historic shoreline. Therefore the works required to carry out the proposed development would not be likely to interfere with objects, remains or artefacts of archaeological or historic interest, although monitoring of those works would be prudent.

- 7.5. Nevertheless the development would have a significant impact on the setting of the historic sites at the holy well, castle and churchyard. The proposed use as an open storage yard for the port would have a modern functional appearance with no aesthetic appeal. It would involve movement and activity that generated an appreciable level of noise and disturbance. The character of the proposed use would therefore be at odds with the historic and tranquil setting of the well, castle and churchyard. The proposed planting around the site would mitigate this impact to a limited extent only. However the proposed development would be in keeping with the adjoining harbour, both in terms of appearance and the noise and disturbance likely to be generated by the proposed activity. Planning policy supports both the development of the harbour and the protection of the historic sites. The question arises as to which objective development upon this site should serve. This question is debatable. However the site is on low lying reclaimed land immediately beside the harbour. The most recent local area plan zoned the site for port activity. It therefore differs from the higher land above the historic shoreline upon which the board refused permission for development under PL05.246540 and PL05. 241508. The local area plan defined a boundary between the land for harbour uses and the area reserved for amenity that includes the historic well, castle and church. It might be argued that this boundary should be further from the historic sites, but this matter would be more appropriately addressed in the plan making process rather than in the course of a particular planning application. The appropriate use of the site is therefore considered to port related activity such as that currently proposed. The appeal objected to the possibility of the storage of hydrocarbons on the site. However the proposal is for port related activity and so the site should not be used for the storage of any goods or materials other than those which pass through the port, and the applicant has clarified that the bulk storage of hydrocarbons is not included in the application.
- 7.6. The appeal site is not in or near any Natura 2000 site. Drainage is to the existing sewerage system serving the harbour. In these circumstances it can be concluded that the proposed development, either individually or in combination with any other plan or project, would not be likely to have a significant effect on any Natura 2000 site and a stage 2 appropriate assessment is not required. Nor would the development be likely to have any other significant impacts on natural heritage.

## 8.0 Recommendation

8.1. I recommend that permission be granted subject to the conditions set out below.

## 9.0 Reasons and Considerations

Having regard to the location of the site on reclaimed land beside the harbour at Killybegs which is zoned for Harbour/Port Activity under the 2008 Local Area Plan for Killybegs, it is considered that the proposed development would be in keeping with policy T-P-26 of the Donegal County Development Plan 2012-2018 and that, subject to compliance with the conditions set out below, it would not seriously injure the amenities or heritage of the area and would be acceptable in terms of traffic safety and convenience. It would therefore be in keeping with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. The site shall only be used for the handling of goods and materials which pass through the port of Killybegs. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity

2. The site shall only be used for the handling of goods and materials which pass through the port of Killybegs. It shall not be used for the storage of hydrocarbons.

**Reason:** In the interests of clarity

3. No advertising signs shall be erected or posted on the site with the prior written agreement of the planning authority.

**Reason:** In the interests of visual amenity

4. The hedging shall be Escallonia which shall be planted on the site prior to the commencement of development. Any plants that die within the subsequent three years shall be replaced.

**Reason:** In the interests of visual amenity

5. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the planning authority for such works and services.

**Reason:** In the interest of public health.

6. The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall -

(a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and geotechnical investigations) relating to the proposed development,

(b) employ a suitably-qualified archaeologist who shall monitor all site investigations and other excavation works, and

(c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.

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

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

the site.

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7. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.
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. **Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission

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Stephen J. O'Sullivan

Planning Inspector

13<sup>th</sup> December 2016