



An
Bord
Pleanála

Inspector's Report 247263

Development	Removal of loading bay, construction of a single storey extension with loading bay, escape stairway, conversion of existing offices to laboratory, extension of dwelling and conversion of office.
Location	Main Street, Dunkineely, Donegal PO, Co Donegal.
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	16/51041
Applicant	Charles Vial (Fish Merchants Ltd)
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellant	Thomas and Veronica McWhinnie
Observers	Derek H Beck Rosemarie McLaughlin
Date of Site Inspection	7/12/16
Inspector	Dolores McCague

1.0 Site Location and Description

- 1.1. The site of the development is located on the north side of Main Street (N56) in the village of Dunkineely which is located c. 16km. west of Donegal Town and c. 8km. east of Killybegs.
- 1.2. The site comprises a 4 bay two storey dwelling at the edge of the footpath with a large field attached to the rear; a wide ungated vehicular access across the footpath to a yard and buildings currently in use as a fish processing plant. Also associated with the site is the former livestock mart which has a pedestrian access from the subject site and has its vehicular access from a local road to the west. The mart site includes large buildings, part of which are currently used as part of the fish processing activity, and a large hard surfaced yard which is also currently used in association with the fish processing activity. A recently constructed palisade fence with a vehicular access, separates this area from the adjoining public road. The mart site bounds a Church and some dwellings.
- 1.3. A three storey residence with dormer windows at second floor forms the western boundary of the site on Main Street. This dwelling has a small rear yard which is separated from the subject site by a high masonry wall along the rear and by timber fencing along the side. To the west of this house and set back from the street there is a two storey house, beside which there is an entrance to a business/factory type building to the rear; no longer associated with the subject development. A local shop is located on the opposite side of Main Street. The other development along Main Street is a mixture of commercial and residential.
- 1.4. Site area is given as 0.372ha. Existing buildings comprise 972.6m² (factory); proposed works 660.4m².

2.0 Proposed Development

- 2.1. The proposed development is the removal of a loading bay, and the construction of a single storey extension with loading bay, escape stairway;

the conversion of existing offices to laboratory, and extension conversion of an existing dwelling to office use.

2.2. Listed details include:

- removal of existing loading ramp way, roof and side walling forming covered loading bay, first floor access stairs and decking and boundary walls.
- construction of a single storey extension with loading bay, extended raised external loading area with new loading ramp way serving both the existing and proposed building and an ESB substation. All linked to the existing building via a new central stairway serving the first floor at the existing building. Pedestrian access to the rear of the building.
- New escape stairway from the first floor of the building.
- Conversion of existing offices located on the first floor of the existing factory building into a laboratory with separate office,
- New access circulation stairs and railings adjacent to the existing loading bay,
- Removal of existing factory waste water treatment and storage tanks and installation of new DAF (Dissolved Air Flotation) tank to treat the factory waste with a storage tank to store the liquid waste prior to removal off site.
- New sign to the road facing elevation of the existing building.
- Refurbishment and extension of existing dwelling located at the front of the site (roadside) and conversion to an office including an extension to the rear of existing building, raising the existing ridge line, associated building signage and reconnection to existing foul and storm sewers.
- All associated works and site works including connection to existing storm sewer, additional parking etc.

2.3. The proposed extension comprises 476m² the change of use from dwelling to office 146.6m² and from office to laboratory 37.7m².

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to grant planning permission subject to 8 conditions, including:

1(b) - no fishmeal or fish oil shall be produced or processed within the developments.

3 - prior to occupation - 2 m high wall shall be constructed along the eastern site boundary.

4 - revised drawings drawn to an appropriate scale that show the front elevation of the house to be converted to offices redesigned to have windows of vertical emphasis.

5(a) - Contaminated waste and runoff directed to sealed storage tanks and or DAF and contained there until treated and transported in a sealed tanker to the effluent treatment plant at Island Seafoods.

(c) - no discharge of process effluent to the public sewer.

(d) - effluent to be transported regularly and aerated while stored.

(e) - noise limits.

3.2. Planning Authority Reports

3.2.1. Planning Reports

Planning:

History including 15/50744 which refers to policy ED-P-16 as a reason for refusal.

ED-P-16 - development will be required to meet the following:

compatible with surrounding land uses existing or approved does not harm the amenities of nearby residents and does not create a noise nuisance.

Stated area of 0.37 ha

Currently occupied by a fish processing factory that takes in fish by-products for processing into frozen minced blocks for the pet food industry: an industrial process.

The applicant essentially proposes the erection of a 461 sq m extension to the commercial premises comprising a cold store/ holding room, a work / loading/ dispatch area and associated lobby, stairs and ESB room.

The proposed development would extend into an area that currently serves as a rear garden for the existing dwelling within the site. It is also proposed to extend and change an existing house that fronts onto Main St. from residential to office, the proposed front elevation should be remodelled.

Traffic – applicant’s architect has advised that there are currently 4 morning deliveries per day. At its busiest 7 loads per week of finished product are dispatched. 1-2 deliveries of base product arrive daily from storage in Sligo and Dungannon. If permission is granted all transportation from cold storage would cease. Adequate storage would be available on site. Traffic would be reduced.

Additional storage would allow a more thorough quality control and reduce the amount of waste material leaving the site. The proposed development is not for the purpose of intensifying the activity on site but to rationalise activity particularly in terms of logistics.

To reduce unnecessary transportation to and from off-site cold storage.

Access necessitates either reversing off Main St into the restricted access, or reversing out. Lorries cannot turn within the site. Delays are caused in the Main St, N56. The proposed development would allow for vehicles to turn within the site and eliminate regular obstruction of the Main St. Internal movements are hazardous and a threat to employee safety.

Proposed layout would provide on-site car parking, reduce street parking and associated congestion.

Waste – the architect notes that waste water from the various factory processes is screened, removing the larger particles. The remaining water is collected in storage tanks and transferred into tankers and transported to a certified waste treatment plant. It is proposed to install a DAF tank to treat waste and a storage tank to hold treated liquid waste, prior to removal. Oil / fuel interceptor to be installed on storm water drainage system within the site.

Development Plan policies are cited:

EDP3

EDP2

EDP16

The principle of a commercial development at this location is long established.

Concerns regarding this development have been raised in the past.

Under 116893 ABP (2000) refused permission for retention and completion of an extension to the fish processing factory due to concerns that the proposed development would constitute an intensification of use on this restricted site which would seriously injure the amenities of property in the vicinity; and lack of adequate parking/turning facilities.

The applicant has made a compelling and tenable argument for the development and against the previous refusal. The planning authority accepts that the proposed development is for rationalisation rather than intensification and that it would present a valuable planning gain: free flow of traffic and freeing up parking spaces along the street.

Screening for AA – there is a separation distance of 3.5km between the factory and the nearest SAC and as the factory predates Habitats Directive therefore there is no need for screening.

Re. issues raised by objectors:

Loss of a residential property – the PA has no objection.

Doubling of size – the PA accepts it is for rationalisation.

Access from mart car park – this is only pedestrian; none of the drawings imply that fish would be delivered from the mart car park.

Design of alterations to house not appropriate – the PA concurs.

Signage visually inappropriate – it would be relatively modest.

New parking spaces in proximity to dwelling – no such spaces are shown; development will negate the need for reversing of articulated vehicles amenity will be improved; existing entrance is of longstanding.

Proposal does not provide sufficient carparking – table 25 of the DCP: for light industrial should be assessed on merit – the number of workers, operating patterns, location and proximity to public transport, and a minimum of 1 space per 2 employees. Not intensification, no additional employees. 4 spaces proposed.

Materially contravene EDP16 – local amenity – it would benefit adjoining property to the west; the adjoining property to the east is a commercial restaurant; to the rear is a mart and car park.

Nuisance etc – it is contended that at present washing of vehicles results in fish offal discharging to the McWhinnie property in aerosol form through the use of power washers. There is a long established use of the existing premises as a fish factory.

Recommendation to grant permission subject to 8 conditions.

The decision was in accordance with planning report.

3.2.2. Other Technical Reports

3.3. Reports

CFO – conditions

EHO – no objection, conditions

Senior Executive Technician – the company does not intend to discharge effluent to the sewer or waters, they intend to treat the effluent in a dissolved Air Flotation unit, hold it, and transport the treated portion to Island Seafoods company to be used as a raw product for their treatment plant. They intend to use the sludges produced from the treatment plant within their own process for category 1 processing. Conditions.

3.4. Prescribed Bodies

TII – relies on PA to abide by official policy.

3.5. Third Party Observations made to Planning Authority

3.6. Issues raised: nuisance, smell, vermin, traffic, inadequate waste water treatment capacity, increase in scale and capacity of facility, not accompanied by appropriate environmental studies, residential amenity, use is incompatible with location; relationship and activity on adjoining lands is unclear.

4.0 Planning History

15/50744 - Removal of loading rampway roof and sidewall forming covered loading bay, first floor access stairs and decking, construction of a single storey extension to eastern side with a loading bay, extended raised loading area with loading rampway serving both existing and proposed building. ESB substation, new central stairway, pedestrian access to rear of building, new escape stairway, new access and

circulation stairs and railings adjacent to the existing loading bay, removal of factory waste water tank and storage tanks and installation of new DAF tank to treat factory waste with a storage tank to store the liquid waste prior to removal off-site, new sign to road elevation, additional parking, all site works etc,

Refused for the reason:

The proposed development is located on / adjacent to the Main Street of the village of Dunkineely, in an area primarily characterised by residential development. It is a policy of the Council (Policy ED-P-16, County Development Plan 2012-2018, (as varied)) that any proposal for economic development use, in addition to other policy provisions of the County Development Plan, will be required to meet (inter alia) the following criteria:

- a) It is compatible with surrounding land uses existing or approved
- b) It does not harm the amenities of nearby residents
- c) it does not create a noise nuisance;

The proposed development would result in a significant enlargement of an industrial site within the village centre and by reason of (a) the developments scale and proximity to third party residential dwellings, (b) the nature of the industrial activities carried out on site and (c) the proximity of HGV turning areas and car parking areas to third party properties, would be seriously injurious to the amenities of properties in the vicinity by reason of noise and odour nuisance and as a result of traffic movements associated with the development. Accordingly, the proposed development would not be compatible with surrounding land uses and to permit the development would materially contravene Policy ED-P-16 of the CDP. The proposed development would therefore be contrary to the proper planning and development of the area.

13/50447 – construction of an ESB substation – withdrawn.

06/20110 application for detached dwelling - refused.

05/597 permission granted for change of use to marine and industrial hydraulic services comprising of light engineering and associated storage.

PL 05.116893 (Reg. Ref. 99/2469) - permission refused for retention and completion of fish factory extension at Main Street, Dunkineely, for two reasons:

The proposed development would contravene materially a condition attached to an existing permission for development at this location, namely condition number 1 attached to the permission granted by the planning authority on the 15th day of February, 1999 under planning register reference number 98/1512.

The proposed development involves an intensification of use on this restricted site which would seriously injure the amenities of property in the vicinity due to the proximity of industrial buildings and the consequent lack of adequate parking/turning facilities associated with the development.

01/740 retention of holding room, canopy and factory doors – withdrawn.

Reg. Ref. 98/1512 – permission granted for retention and completion of fish factory extension, housing fish processing at ground floor level and packaging storage mezzanine / first floor level at this location subject to eight conditions – floor area 731 sq.m.

Reg. Ref. 97/278 – Permission granted for retention of extension to existing fish factory at this location.

5.0 Policy Context

5.1. Development Plan

County Donegal Development Plan 2012-2018 is the operative plan.

Relevant provisions include

ED-P-2 - It is a policy of the Council that any economic development proposal that meets the locational policies set out hereunder (policies ED-P-3 – ED-P-15) must also comply with the criteria set out in Policy ED-P-16 and be consistent with the proper planning and sustainable development of the area.

ED-P-3 - It is a policy of the Council to permit economic development proposals involving an industrial building or process (as defined in Art 5 of the 2001 Planning Regulations) within the defined settlements on land zoned for such use in a local plan or specified in a settlement framework in this Plan subject to any environmental considerations and policy.

ED-P-2. - Industrial development will also be permitted in an existing industrial/employment area within settlements provided the proposal is of a scale, nature and form appropriate to the location and complies with policy ED-P-2. Elsewhere within the settlements, proposals for industrial use (not comprising light industrial use) will be permitted only in Tier 1 and Tier 2 settlements and where it can be demonstrated that there is no available zoned land or land on an existing industrial area; that the proposal is for a firm rather than speculative proposal; and that the development would make a substantial contribution to the economy of the area. Development involving Industrial buildings or processes will not be permitted outside the boundary of settlements in the open countryside unless related directly to a site specific product resource and the development proposed could not be located in a settlement in line with this policy.

ED-P-16- It is a policy of the Council that any proposal for economic development use, in addition to other policy provisions of this Plan, will be required to meet all the following criteria; it is compatible with surrounding land uses existing or approved; (b) it does not harm the amenities of nearby residents; (c) there is existing or programmed capacity in the water infrastructure (supply and/or effluent disposal) or suitable developer-led improvements can be identified and delivered; (d) the existing road network can safely handle any extra vehicular traffic generated by the proposed development or suitable developer-led improvements are identified and delivered to overcome any road problems; (e) adequate access arrangements, parking, maneuvering and servicing areas are provided in line with standards set out in Appendix B or as otherwise agreed in writing with the planning authority; (f) it does not create a noise nuisance; (g) it is capable of dealing satisfactorily with any emission(s); (h) it does not adversely affect important features of the built heritage or natural heritage including Natura 2000 sites; (i) it is not located in an area at flood risk and/or will not cause or exacerbate flooding; (j) the site layout, building design, associated infrastructure and landscaping arrangements are of high quality and assist the promotion of sustainability and biodiversity; (k) appropriate boundary treatment and means of enclosure are provided and any areas of outside storage proposed are adequately screened from public view; (l) in the case of proposals in the countryside, there are satisfactory measures to assist integration into the landscape (m) it does not compromise water quality nor the programme of measures

contained within the North Western River Basin (NWIRBD) Management Plan 2009 - 2015.

5.2. Natural Heritage Designations

The nearest Natura site is Saint John's Point SAC (site code 000191) some 3.5km from the subject site and to which there is no drainage pathway; therefore there are no Natura sites with potential to be impacted by the proposed development.

6.0 The Appeal

6.1. Grounds of Appeal

PA Dorrian & Co

Processes fish offal and converts to animal feed.

Situated in a small rural village of approx. 300 people including the surrounding area.

Next door to Mr & Mrs McWhinney.

Row of terraced houses. Factory is recessed but the area to the fore is used for parking vehicles and for general access and egress.

This necessitates the arrival of large articulated lorries at all hours day and night, containing fish heads, guts and other side products from the fishing industry. The vehicles are parked at the gable of Mr & Mrs McWhinney; they have been complaining, including court proceedings in relation to nuisance, for a long number of years.

The permission would appear to address cosmetically, issues regarding noxious smells and the arrival and departure of vehicles.

Mr & Mrs McWhinney have encountered rat and insect infestation.

Fish offal is stored in open containers or trailers in the forecourt and the vehicles are left in this holding position until the capacity in the factory is sufficient to deal with them.

Any increase in activity is incompatible with the quiet enjoyment of the property and exacerbates an already intolerable situation.

The permission doubles the factory floor area, involving an increase in the volume of traffic arriving, volume of material and smell and associated problems. The current size is unmanageable and to increase it would increase the problems in the centre of a quiet village.

The local road network and overall infrastructure of the village is insufficient to deal with this increase.

Traffic can not successfully navigate the entrance without creating traffic hazard and noise pollution.

The storage of liquid waste is adjacent to property of Mr & Mrs McWhinney and presents a hazard of noxious escape.

There is no proper facility for washing vehicles or trailers which are habitually left on the premises. Any attempt to wash out would result in offal and other deleterious matter being washed onto the forecourt in the vicinity of or onto the property of Mr & Mrs McWhinney.

The experience has been that the washing of these vehicles gives rise to offal in aerosol form, from power washing, arriving at the home of Mr & Mrs McWhinney.

It is difficult to use the clothes line.

An increase in activity would increase annoyance and reduce value.

The similar application in 2015 was refused, reason:

The property located on or adjacent to the Main Street of the Village of Dunkineely in an area primarily characterized by residential development.

Policy of CDP

It would result in a significant enlargement of an industrial site within the village centre and by reason if (a) the developments scale and proximity to third party residential dwellings, (b) the nature of the industrial activities carried out on site and (c) the proximity of HGV turning areas and car parking areas to third party properties, would be seriously injurious to the

amenities of properties in the vicinity by reason of noise and odour nuisance and as a result of traffic movements.

These criteria are unchanged. If incompatible in 2015 it is incompatible in 2016; If impacting amenity in 2015 it does so in 2016. The impact of increase in traffic and absence of turning area is not addressed and cannot now be adequately addressed. Proximity to HGV parking was described as being seriously injurious to the amenities of properties in the vicinity by reason of noise and odour. The location of an increased processing factory in a small village is incompatible with surrounding land uses.

6.2. Applicant Response

AI Architects have responded to the grounds of appeal on behalf of the first party. The proposed development addresses 2 issues – 1 access and parking, and 2 consolidation of company's product storage – from Island Seafoods Burtonport, Dungannon Seafood's and Collooney Co Sligo.

C Fish is a fish processing factory that takes fish by-products processed into frozen minced blocks for the pet food industry. It can process 28 tonnes per day. There are 4 morning deliveries per day at present; delivering 28 tonnes of base product. At its busiest there are 120 tonnes delivered; and 7 loads per week of finished product are dispatched on either 16 or 24 tonne loads throughout Ireland, England and Scotland. 40 % to the UK. A further 120 tonnes can be stored in Sligo to accommodate mackerel during winter; and tuna during summer; 175 is stored in Burtonport and 30 tonnes is stored in Dungannon –100 tonnes of mackerel and tuna and the balance of white fish. There are 1-2 deliveries of mackerel base product per day during winter and 2 per day of tuna during July/Aug. There are 90 tonnes of tuna stored in Sligo and dispatched at a rate of 4-5 tonnes per week; 40% of all stored product must return via Dunkineely prior to dispatching. The Sligo, Burtonport and Dungannon storage will close. This will remove all transportation to and from these centres; reducing dispatches to 3-4 per week.

In total 5000 tonnes is brought to the factory per annum. It doesn't have capacity to complete quality control and this results in 2000 tonnes being rejected and sold on as raw product to the fish meal plant in Killybegs; a further 3 lorry loads per week.

Extended holding room will allow for more quality control, less waste, and reduce the number of dispatches to 3-4 per week.

This project is fully supported by Donegal County Council. The appellants have been the first party's neighbours for 36 years. They have cultivated a history of animosity towards Mr Vial pursuing him through the court. The first party gifted them land. The appeal is intended to frustrate and the Board is requested to invoke S138(1).

Their dwelling is located historically adjacent to several commercial fish processing facilities.

The first party rented a premises for fish processing which utilised a vehicular entrance west of their dwelling from 1985 until they purchased this premises in 1988, which directly abutted the rear wall of their dwelling. The production buildings of two processors were removed and the operation moved to the rear of the site. Leaving an open yard to the rear of their house and dramatically improving light.

In 2015 the first party took a lease on the mart site and immediately moved storage and washing of lorries, bins and boxes to that site. No lorry or box washing has taken place in the yard behind the third party's dwelling since then.

A similar proposal was made in 2015 (15/50744) the third party canvassed residents who signed a petition and the application was refused.

The application stated clearly that it was the intention to consolidate their storage and vehicular issues. It is compatible with surroundings which is an existing fish processing facility. It is 40m to the rear of a dwelling owned by the first party and a cafe.

After the previous refusal at a pre-planning meeting the first party was advised to hold public consultation, discuss proposals and listen to local residents. This drew no response from residents. Drawings were posted on a window and details were posted on Dunkineely Community Facebook. There has been no adverse comment.

Response to grounds:

The third party house is detached, not terraced. It was surrounded by fish processing when they purchased the property.

The processing hours are 8am to 5pm weekdays and it operates on c 20 Saturdays annually. The night washdown, other than yard washdown, is restricted to the building from 4.00pm to 11.00pm. Occasionally there is an hour of lorry movement.

There is no noise at night; noise is within the building during the day.

No evidence has been presented re. rats. They retain a pest control service,

Re. fish offal being stored in open containers, it is never stored in open containers in the forecourt. Vehicles that are not being unloaded are kept closed with fridges running.

All fresh material and material for disposal is held in the chiller until processed or moved on.

The proposal will reduce traffic, smells and noise. There will be no increase in activity.

The lack of a dispatch area has resulted in the blocking of access routes and the restriction of space available causes conflicts in the processing of both the material leaving and carrying out of the work process.

The proposal removes congestion and allows turning within the curtilage. There will be delineated routes, more efficient working processes and less down time.

Waste storage tanks will be located further away from third party's house. Waste water flow is up to 10m³ per day, 40m³ per week of economically valuable sludge, 10-20% by volume. There will be storage above ground and below ground: total capacity 30m³,

Re. washing and offal being washed into their site; this is untrue. Lorries have not been washed on site since 2015.

The yard is cleaned, the rear wall of their property is 5m away and there is a solid wall.

The side boundary is a 2m high timber fence erected by them on land gifted by the first party; before which they had a very small garden.

The rear access is for staff parking; there is no requirement for approval because the previous use was parking.

The relationship of new works is clearly shown. The new area of hardstanding is further away from the third party and will reduce the sound of lorries. The use of the marts existing car park for staff car parking results in the turning areas to the front remaining uncluttered.

Access from the rear is far safer than from the front, removing pedestrians from the turning area.

The first party met a roads engineer numerous times re. the entrance. The roads engineer voiced the opinion that to be in a position to turn within the site would be a great asset. The height of lorry cabs allows far greater visibility over the roof of any parked cars. All staff drive to work and park on either on side of the roads or the main road. All will be able to park in a private car park.

Any cleaning will be carried out on the hardstanding. Washing had been carried out remotely. They will now be washed and parked in the new loading bays away from first party or in mart car park.

Report from advanced survey solutions is full of inaccuracies.

Deliveries not suitable for human consumption for processing into cat food is not correct. Parts of slaughtered animals fit for human consumption for processing into bait and pet ingredients.

There is solid and liquid waste that is removed in open topped lorries, and a tanker. The open lorries are loaded by forklift which takes an hour. Unused fish is normally removed to United Fish Industries using refrigerated lorries or closed curtain sides. The photograph relates to open top lorries in a singular set of circumstances, during the close down of the Killybegs UFI plant in 2015, when UFI organised the transport to another site in the UK.

Re. liquid waste removal, it is carried out 2-3 times per week and with regard to the smell, the first party is required to remove the liquid waste under contract. At present the removal system is not completely airtight and some smells are released. The proposal places tanks underground in a location further from the third party. Air tight

sealed couplings will prevent release of smells. The proposal will address the bad fish smell referred to in the report.

6.3. Planning Authority Response

The planning authority responded on the Oct 13th 2016:

The existing fish factory has been in place since the mid 1980's.

The proposed development would greatly reduce the number of deliveries coming to and leaving the existing factory, per their statement.

The proposed development would allow articulated lorries to turn within the site and negate the current situation whereby articulated lorries have to either reverse into or out of the existing premises, which causes regular obstruction to the Main Street, a segment of the N56 National Secondary Road, the principal route to Killybegs Harbour and other west Donegal Villages and the primary tourist route around the county.

The new dissolved flotation tank would greatly facilitate the mitigation of any odour nuisance arising from this long established fish factory.

The proposed development seeks to rationalise existing processes on site rather than to facilitate an intensification.

The response refers the Board to the Planner's report on the application.

The planning authority responded further on the 7th Nov:

The response refers to their previous response and the Planners report on the application.

They request the Board to uphold their decision with reference to the proper planning and sustainable development of Dunkineely and the Border Midlands West Region.

6.4. Observations

Derek H Beck – has submitted an observation on this appeal, countersigned by 26 others, referring to pollution, noise, traffic congestion, and the residential area.

Heavy goods vehicles arriving and exiting are unable to do so other than by making three or more turns and causing congestion, 8.30 am to 8.30 pm, Monday to Friday. The damage that has been done to a neighbour's property, on two occasions, have made the owner fearful of using his front room during the operation.

Damage that has been done to road traffic signs at the corner, due to vehicles being unable to negotiate the turn.

Noise associated with this is not in the interests of residents and this is disregarded by the operator.

The increase in activity has caused a rise in pollution which can no longer be tolerated.

Rosemarie McLaughlin

The size: 660 sqm proposed and 972 sqm existing, is clear from the drawings. An incompatible, non-conforming use exists in the village centre. The proposed large development represents a considerable expansion and an intensification of use.

Such development will allow for further development and intensification of use, compounding an existing negative planning position.

The smells, particularly in summer, are extremely malodorous. The impact varies depending on weather and is foul around this area of the village.

Volumes stated are 28 tonnes of base product per day. Once extended the other depots in Sligo 120 tonnes, Burtonport 175 tonnes and Dungannon 30 tonnes, will transfer to Dunkineely. It does not state, but one assumes, that this is weekly.

An existing house is to change use.

Previous refusal states that the development is contrary to ED-P-16. A post refusal meeting record states that while the recent decision is considered the correct approach it was agreed that a further meeting on-site would be facilitated but that it was unlikely that the decision would be favourably reconsidered and there is potential in considering other options/sites.

In the current application there is no significant change in the proposal and no new development plan. See the planning report for the refusal – none of these considerations have changed.

The long planning history is one of refusals and applications for retention.

There is intensification of use; the acceptance that this is rationalisation is illogical.

The history of site is of applications for retention for ongoing enlargement of this non-conforming use.

The company website mentions soil enrichers currently in development.

EIS/AA – The planning report contends that as the existing use is pre existing AA is not necessary, nor is EIS. The Board will be aware that this is for a considerable extension and intensification AA screening is necessary and despite being sub-threshold, EIS screening is necessary, having regard to the significant environmental impacts.

Observer refers to the Planning and Development (Amendment) (No. 2) Regulations 2011). Article 15¹, as reason why it should be screened for EIA.

Given the increasing quantities from other depots now to be brought to the site as outlined in the application documentation, the development can also be considered as subthreshold A7 (b)².

Proposed development is wholly incompatible with the village,

The nature of the product stored and proposed additional product from other sites will intensify the exceptionally foul smells particularly in summer. The fish by product waste has to come to the site for storage by way of trucks which travel through the heart of the village and park on the site. The trucks carrying the fish waste smell dreadful and require ongoing cleaning. Other sites should be considered for this significant enlargement of an industrial process away from residential recreational and commercial uses associated with a village centre.

¹ Planning and Development (Amendment) (No. 2) Regulations 2011). 15. Any project listed in this Part which does not exceed a quantity, area or other limit specified in this Part in respect of the relevant class of development but which would be likely to have significant effects on the environment, having regard to the criteria set out in Schedule 7.”.

² 7 (b) Installations for packing and canning of animal and vegetable products, where the capacity for processing raw materials would exceed 100 tonnes per day.

The justification that trucks will be able to drive forward out of the site, as a planning gain, when the size and use will intensify into the future, is not a planning gain but a planning loss. The trucks could be realigned within the site without any additional floor space should the applicant so wish, although the continuous growth of the factory means HGVs are inappropriately entering the centre of the village daily.

The fish factory is on the same side of the road as the school, 400m to the west, the Church 50m to the east, and a row of residential houses. Opposite the site is the local shop.

Villagers have to traverse the footpath to go about their business.

There is a risk of the village becoming sterilised to residential development by allowing intensification.

The observer refers to the sale of a house to the factory due to incompatibility.

The PA considered the proposed development incompatible with the CDP in 2015. They have failed to consider material contravention procedure.

It was open to them to request further information.

6.5. Further Responses

PA Dorrian & Co. on behalf of the third party has responded to the first party response to the grounds of appeal, including:

The first party's response response to the grounds acknowledges an intensification of use; 28 tonnes of base product delivered daily. Improvement in quality control, vehicular traffic is speculative.

Applicant is seeking to greatly increase the floor area and ultimately the throughput. It is impossible to speculate as to the level of activity the proposed expansion would potentially accommodate. It is likely to expand activity into the available space.

Issues between the parties have been ventilated through the Circuit Court. A letter is enclosed confirming the terms of settlement. To suggest that the objection is malevolently motivated is objectionable and unfounded by the history of events, court proceedings and previous successful objection of an identical planning application.

Historic fish smoking activities have moved from the small country village to more appropriate sites. Fish processing activities have been carried out since the third parties resided at this location. That the tolerance of an on-going nuisance would validate this expansion is not reasonable.

The expansion is not compatible with surrounding land use: a picturesque village largely residential in form.

It is illogical to suggest that an increase in capacity will result in less traffic. The waste water in the area is not efficient to deal with massive amounts of runoff from washing vehicles.

Residents failure to engage in the public consultation cannot be characterised as indifference. It is of no consequence that information was put in a window or that there are three Facebook 'likes'.

Third parties have complained continuously of smells, noise and the open storage of containers.

Regarding the arguments made that there are advantages to the developer, the outcome would be that the developer proposes to extend a factory and increase capacity in an unsuitable environment.

Waste water is not, as argued, being dealt with in an efficient and inoffensive manner and the proposed development would increase the items to which they object.

To increase the scale would increase the traffic and parking, loading and unloading problems experienced by the third parties; and washing out lorries with power hoses.

The first party response to the report by Advanced Survey Solutions, photographs taken at a particular time, do not counter the report.

The third party response concludes:

The application is to expand the plant to a very considerable degree.

The expansion in the context that the plant itself would never now obtain planning permission, in its current form, current scale and current activity, if an application were to be made for the first time.

The third parties accept that they are stuck with the plant as is, but expansion is abhorrent and contrary to good planning practice and at variance with the 2015 refusal.

7.0 Assessment

7.1. The issues which arise in relation to this appeal are appropriate assessment, S138, the principle of the development, residential amenity, EIA and other issues and the following assessment is dealt with under these headings.

7.2. Appropriate Assessment

7.3. Having regard to the nature and scale of the proposed development and nature of the receiving environment no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect, individually or in combination with other plans or projects, on a European site.

7.4. S138

7.5. The first party states that the appeal is intended to frustrate and they request the Board to invoke S138(1), under which the Board can dismiss the appeal as vexatious etc.

7.6. The third party points out that their history of objection to the development on this site, includes satisfactory results in relation to previous objections and a successful outcome in court.

7.7. I am satisfied, based on the grounds of appeal, that the appeal is not without substance or foundation and that S 138 should not be invoked.

7.8. The Principle of the Development

7.9. The issues which arise under this heading include the location of the site, in a town centre, where it is located among service and residential uses. The mixture of uses in the vicinity of the site include predominantly residential use, together with community facilities – church and school, and services – local shops. The town

provides services to local people and passing traffic using the N56 National Secondary Road, the principal route to Killybegs Harbour and other west Donegal Villages and the primary tourist route around the county, being part of the Wild Atlantic Way touring route.

7.10. It is accepted by all sides that a fish factory is an established use at this location. The use, which evolved from some earlier form of low intensity, craft use is now a non-conforming industrial-scale use.

7.1. The first party has put forward the argument that the proposed development, of some 660.4m² including an extension comprising 476m², and change of use from dwelling to office -146.6m², and from office to laboratory – 37.7m², is not an intensification of use. It is clear to me that the proposed development involves an intensification of use on this site. It will facilitate the closure of other facilities and the diversion of product storage to this site. The increase in scale of the premises will improve work flow, the argument put forward by the first party, but it will also facilitate further expansion of the business.

7.2. County Development Plan policy, ED-P-16, was cited in the planning authority's recent refusal of permission for an almost identical development. This policy refers to proposal for economic development use; that, in addition to other policy provisions of the County Development Plan, such proposals will be required to meet a list of criteria which list includes:

it is compatible with surrounding land uses existing or approved,

it does not harm the amenities of nearby residents,

it does not create a noise nuisance,

it is capable of dealing satisfactorily with any emissions.

7.3. In my opinion these criteria assist in the determination of whether the proposed development is acceptable in principle.

7.4. An observer states that the nature of the product stored and proposed additional product from other sites will intensify the exceptionally foul smells particularly in summer. The fish by product waste has to come to the site for storage by way of trucks which travel through the heart of the village and park on the site. The trucks carrying the fish waste smell dreadful and require ongoing cleaning. Other sites

should be considered for this significant enlargement of an industrial process away from residential recreational and commercial uses associated with a village centre. The observer further states that there is a risk of the village becoming sterilised to residential development by allowing intensification.

7.5. In my opinion, notwithstanding that there is an established factory at this location, it represents a non-conforming use the expansion of which is incompatible with surrounding uses and the town centre location; the proposed development fails to meet the foregoing criteria set out in the county development plan; and the proposed development is therefore, unacceptable in principle.

7.6. **Residential Amenity**

7.7. Residential amenity is the main issue referred to in the grounds of appeal and the observations.

7.8. The third party and observers raise issues of odour, noise and traffic impacts, on the amenity of residents of the area and others who visit the town.

7.9. Odour - It is not a surprise that odour is a cause of concern at a fish processing facility. The first party points out that better management of the operations on site and proposed waste storage facilities will reduce the odour nuisance. Odour nuisance can arise from delivery vehicles, from the processing and from the management of waste and from cleaning activities. I accept that measures being taken are likely to reduce the level of nuisance. I accept that the measures can be taken to mitigate the impact of foul odour but I do not accept that there are any measures which can be taken which would eliminate the nuisance. In my opinion the odour nuisance associated with the operation, is the main reason why the expansion of this non-conforming use, in the heart of the village of Dunkineely, is inappropriate and should be refused permission.

7.10. Noise – The main noise associated with the existing development is that from vehicles accessing the site, which, from the information on the file, are required to make three or more turns to enable them to access the site, and in the process generate noise. In addition the proximity of HGV parking to the rear of dwellings is referred to in the context of noise.

- 7.11. The first party states that vehicles that are not being unloaded are kept closed with fridges running. The refrigeration units of vehicles therefore also contribute to noise.
- 7.12. Having regard to the nature of the vehicles and the frequency with which they access this site, in my opinion, noise makes a significant contribution to the negative impact on residential amenity.
- 7.13. **Traffic**
- 7.14. It is accepted by all sides that the existing operation on the site creates traffic congestion. Lorries cannot turn within the site.
- 7.15. The first party states that access necessitates either reversing off Main St into the restricted access, or reversing out; and delays are caused on the Main St / N56. The proposed development would allow for vehicles to turn within the site and eliminate regular obstruction of the Main St. The first party further states that internal movements are hazardous and a threat to employee safety. The first party states that they have met the planning authority's road's engineer numerous times regarding the entrance and that the road's engineer voiced the opinion that to be in a position to turn within the site would be a great asset.
- 7.16. The planning report states that the planning authority accepts that the proposed development is for rationalisation rather than intensification and considers that it would present a valuable planning gain: free flow of traffic and freeing up parking spaces along the street.
- 7.17. I do not accept that the proposed development is for rationalisation rather than intensification. I consider that the proposed development would involve further intensification of use. I accept that it would facilitate better manoeuvring within the site. It should be noted however that no swept path analysis has been presented and no report is provided from any of the council's engineering services including the planning authority's road's engineer referred to by the first party. I am not satisfied that facilitating further HGV and lorry turning manoeuvres, which cross the public footpath, at such a restricted entrance, in this town centre location, would improve pedestrian or traffic safety. It might, in the short term, improve traffic congestion. I note the first party's concern regarding removing staff pedestrians from the turning area, by providing staff parking at the rear of the site; but conflicts would continue to

exist with pedestrians using the public footpath. Having regard to the nature and frequency of vehicles accessing the site, this is a serious concern.

7.18. In my opinion traffic safety is a reason to refuse permission.

7.19. **Development Management**

7.20. The first party states that in 2015 they took a lease on the mart site and immediately moved storage and washing of lorries, bins and boxes to that site; and that no lorry or box washing has taken place in the yard behind the third party's dwelling since then. They further state that the rear access is for staff parking and that there was no requirement for approval because the previous use was parking.

7.21. It was noted on the date of inspection that some of the large buildings within the mart site are now used as part of the fish processing activity, and also that part of the large hard surfaced yard which is now used in association with the fish processing activity. No account of permission for such development is included in the planning history recorded on the subject file.

7.22. The Board should note that such development has taken place, and that it has facilitated intensification of use of the subject site.

7.23. **Other Issues**

7.24. One observer states that the application is of such a type and scale that sub-threshold EIA should be carried out and that the application should have been accompanied by an EIS, and in this regard she refers to the Planning and Development (Amendment) (No. 2) Regulations 2011), 15. *Any project listed in this Part which does not exceed a quantity, area or other limit specified in this Part in respect of the relevant class of development but which would be likely to have significant effects on the environment, having regard to the criteria set out in Schedule 7, and also to article 7 (b) Installations for packing and canning of animal and vegetable products, where the capacity for processing raw materials would exceed 100 tonnes per day.*

7.25. The planning report refers to this issue:

that the existing business was established in 1985 prior to EIA Directive coming into effect; the proposed development is rationalisation, cold storage and dispatch and doesn't require EIA; it is acknowledged that all fish meal plants are prescribed for EIA; the objector has submitted a screenshot of the applicant's website as evidence of the existing and proposed premises's involvement with fishmeal; however the application drawings and documents do not give any indication of such activity; a condition prohibiting the production or processing of fishmeal can be attached.

7.26. Schedule 5 of the Planning and Development Regulations lists types of development for which EIA is required. Listed under Part 2 of the schedule, under food industry are:

7 (h) All fish-meal and fish-oil factories.

7 (b) Installations for packing and canning of animal and vegetable products, where the capacity for processing raw materials would exceed 100 tonnes per day,

and listed under Part 2, as item 15, is:

15 Any project listed in this Part which does not exceed a quantity, area or other limit specified in this Part in respect of the relevant class of development but which would be likely to have significant effects on the environment, having regard to the criteria set out in Schedule 7.

Schedule 7 sets out criteria for determining whether a development would or would not be likely to have significant effects on the environment, which criteria include: the size of the proposed development, pollution and nuisances; the environmental sensitivity of geographical areas likely to be affected by proposed development having regard to the existing land use; and the probability of the impact.

I note that the Oxford dictionary on-line defines 'fishmeal' as ground dried fish used as a fertiliser or animal feed. Wikipedia has a similar, fuller, explanation of the term, which includes drying, or cooking and drying of the fish.

7.27. In relation to item 7 (h) - the description of the proposed process as set out in the AI Architecture letter of the 12th July 2016, which accompanied the application, states that the fish processing factory takes fish by product which is processed into frozen minced blocks for the pet food industry. The raw product enters the factory and is

stored in the chill room; it then proceeds to the processing area where it is graded and minced; the minced product is placed into trays for freezing; it is loaded into blast freezers and frozen; the product is removed from the trays as solid blocks and stacked onto pallets; the pallets are wrapped and transported back up the ramp to the holding room / cold store for distribution.

- 7.28. From the above description of the process involved it could be argued that the factory performs part of the process of producing fishmeal rather than the entire process. It could equally be argued that a process which involves mincing and freeze drying fish for the pet food industry is a process which produces fishmeal.
- 7.29. In relation to item 7 (b) the capacity for processing raw materials is given as 28 tonnes per day and is therefore well below the stated daily threshold of 100 tonnes.
- 7.30. In relation to item 15 and the criteria set out in Schedule 7, the proposed development is of significant size, producing a significant odour nuisance and the geographical area is an environmentally sensitive area in the context of the development, being a small rural town centre with a mixture of residential and town centre type uses; and the probability of impact is high.
- 7.31. It could therefore be argued that, under items 7 (h) and 15 that EIA is required and that an EIS should have been submitted.
- 7.32. In light of my recommendation to refuse planning permission, based on the foregoing assessment, I do not recommend that an EIS be sought.

8.0 Recommendation-

- 8.1. In accordance with the foregoing assessment I recommend that planning permission be refused for the following reasons and considerations.

9.0 Reasons and Considerations

1 It is a policy of the Council (Policy ED-P-16, County Development Plan 2012-2018, (as varied)) that any proposal for economic development use, in addition to other policy provisions of the County Development Plan, will be required to meet (inter alia) the following criteria:

- a) be compatible with surrounding land uses existing or approved,
- b) not harm the amenities of nearby residents,
- c) not create a noise nuisance, and
- d) be capable of dealing satisfactorily with any emissions.

The site is in an area of residential / town centre uses where the proposal to extend and intensify the existing non-conforming use on the site would result in a significant enlargement of an industrial development and having regard to its scale and proximity to dwellings and other town centre uses, the nature of the industrial activities carried out on site and in particular the odour nuisance generated; and the proximity of HGV turning areas to third party properties, would seriously injure the amenities and depreciate the value of property in the vicinity by reason of noise, odour and as a result of traffic movements associated with the development.

Accordingly the proposed development would not be compatible with surrounding land uses and to permit the development would materially contravene Policy ED-P-16 of the County Development Plan. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

2 The proposed development would facilitate intensification of the existing use which already generates significant volumes of traffic, including heavy goods vehicles and lorries, at a town centre site to which only restricted access is available, such that traffic entering and leaving the site causes congestion on the public road, the N56, and conflicts with other road users, including pedestrians using the public footpath. The proposed development would therefore endanger public safety by reason of traffic hazard and obstruction of road users.

Planning Inspector

20th January 2017

- 1 Photographs
- 2 Extracts from County Donegal Development Plan 2012-2018