



An
Bord
Pleanála

Inspector's Report 247494

Development	Alterations to previously granted permission ref. 16/50115, landscaping and adjustment to boundary to accord with land registry map.
Location	Quay Street, Merville, Lifford PO, Co Donegal.
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	16/51217
Applicant	Wendy Tweed
Type of Application	Permission
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellant	Foyle/Merville Rowing Club
Observers	Daniel & Brid McGinley
Date of Site Inspection	17/1/17
Inspector	Dolores McCague

1.0 Site Location and Description

1.1. The site of the development is located at Quay Street, Moville, on the shore of Lough Foyle towards the seaward end of the bay. The site is occupied by a two storey building which is currently being refurbished as a dwelling.

1.2. To the front of the building a new kerb has been developed and a temporary security fence has been erected along this line. Outside of this fence there is a path which follows the edge of ground, higher than the sea which it adjoins. In part this ground is protected by a sea wall and in part it is exposed to a drop. The path continues eastwards to a flight of steps, which access public open space (Bath Green) in front of Montgomery Terrace. South of the building there is a surfaced area, now largely within the area secured by the fence. This area was formerly a car park open to the public. The area adjacent to the site to the south and west is Moville Pier. This area also includes a slipway facing east, immediately adjoining the site. To the south there are marine containers (shipping containers) and a building, used by the rowing club; a pier running west; and other buildings and structures. To the north-east, north and north-west the site is bounded by open space and to the west by a public road. The site comprises partly flat ground close to sea level and partly rising ground which rises steeply in a manner resembling a quarried area, to open space in front of Montgomery Terrace.

1.3. Site area is given as 0.2ha

2.0 Proposed Development

2.1. The proposed development is stated as alterations to previously granted permission ref. 16/50115, landscaping and adjustment to the site boundary to accord with land registry map.

2.2. A letter accompanying the application, from Dedalus Architecture states that in the previous planning application, ref 16/50115, the area in front of the dwelling had an undefined boundary at the western end and remained publicly accessible. In this application the site boundary has been adjusted to accord with the Land Registry Map showing the area between the dwelling and the

shore as being in the ownership of Wendy Tweed. The proposal is for external landscaping in this area while maintaining the existing right of way through the property. The edge of the garden facing the shore will be defined initially by a post and wire fence between two kerbs set 1.2m apart. As the escallonia hedge to be planted between the kerbs grows, the fence will be absorbed into its core and the hedge clipped to maintain a height and width of approx. 1.2m. On the western boundary, in front of the garage, the garden/driveway will be enclosed by a 1.2m high sliding gate and a vertical slat timber fence of similar height and appearance.

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to grant planning permission subject to a single condition requiring compliance with the details submitted.

3.2. Planning Authority Reports

3.2.1. Planning Report

Plan Reg 16/50115, which was permitted, refers to a previous application for this site for development of the former 'hair o the dog' bar which consisting of change of use of the former licensed premises and 1st floor residential accommodation to a single two storey 3 bedroom dwelling house and including all necessary associated alteration works, alteration works include internal remodelling, demolition of former customer WC accommodation at side and rear, construction of an attached domestic garage and roof terrace, alteration and partial demolition of entrance porches, alterations to window openings, replacement of external windows and doors, external landscaping works.

The planning report questions the description of the development, but concludes that the substance of the application, consisting of gates,

fencing and landscaping does constitute development and that therefore the application can be considered.

It is evident that the parent property has historically had an open frontage and that this open frontage has been used over the years as a parking area associated with the use of the adjoining pier and harbour. It has been used as a viewing gallery during local water events and regattas and has facilitated a right of way from Bath Green to the Harbour.

It is the opinion of the submissions that the proposal obstructs this established arrangement and does so without legal rights.

The planner has considered the matter and the facts, and considers that the applicant is the registered owner and has a legal interest in same and there is no legal evidence to the contrary. There is no evidence of a registered burden on these lands. The applicant is therefore entitled, to propose to enclose the open area to the fore, within her ownership, within the landscaped attendant grounds.

It is accepted that there has historically been a right of passage from Bath Green to the Harbour across the open frontage and therefore some form of rights may possibly be established as a result of historical usage. The planner notes that the applicant proposes, in the detail of the scheme, to preserve a right of way, and considers that this is probably an acknowledgement of historical rights.

The applicant is the registered owner, there are no registered burdens on the land; rights as a result of historical usage may exist but would have to be established in court. The arrangement whereby continuance of a right of way from Bath Green to the Harbour, by means of a footpath which is of a character comparable with the footways within the green and along the shore, is entirely satisfactory. The only remaining material change is that private land will no longer be available to the public as a parking or viewing area and in this regard the rights of the applicant are primary, particularly as there is no evidential legal position supporting a position to the contrary.

Discussed with EE Roads – the Council has no public interest in the subject lands. EE Marine – no objection on the basis that it does not interfere with or restrict access to the pier harbour or its operation.

Re. submissions – they raise common themes - public access / use of the land.

Recommendation to grant permission subject to 1 condition.

The decision was in accordance with planning report.

3.2.2. Other Technical Reports

No reports

3.3. Prescribed Bodies

Aquaculture and Foreshore Management Division, Department of Agriculture, Food and the Marine – it appears that the area to which this application refers does not encroach on the State foreshore, however if it transpires that the works do in fact encroach on the foreshore, no works should be undertaken unless the appropriate foreshore consent has been obtained.

3.4. Third Party Observations made to Planning Authority

3.5. The planning authority received objections/observations from:

Foyle Sailing Punt Association

Moyville Raft Race Committee - Inishowen Maritime Museum

Moyville Piers Committee

Moyville Regatta Committee

Moyville Boat Club

Foyle / Moyville Rowing Club

Issues raised: raise public access / use of the land.

3.6. The planning authority received a solicitor's letter on behalf of Movable Piers Committee, post decision regarding unauthorised development. The letter states that an illegal fence has been erected to block the public from using a right of way which has been established for over 166 years at or near Movable Pier. Kerbing has been constructed on the grounds near the pier, a wall has been built and development works have taken place in the manner of developing a lawn and landscaping over part of the public right of way.

The kerbing has been put in place on grounds near to lands which were reclaimed from the foreshore by the Council in the mid 1970's for the purposes of constructing a slipway. The Council have an obligation to protect well-established public rights of way such as the right of way near Movable Pier which forms part of Slí na Sláinte in the area, together with the right of the public to park in the open space to the front of the building. They are satisfied that the legal position is that once a public right of way and a public right to park in the open spaces have been established the owner has no legal right to extinguish said rights by enclosing an open space and neither have they any legal entitlement to divert a public right of way into another narrow area which raises substantial health and safety concerns.

4.0 Planning History

16/50115 – application for development of the former hair o the dog bar consisting of change of use of the former licensed premises and 1st floor residential accommodation to a single two storey 3 bedroom dwelling house including all necessary associated alteration works, proposed alteration works include internal remodelling, demolition of former customer WC accommodation at side and rear, construction of an attached domestic garage and roof terrace, alteration and partial demolition of entrance porches, alterations to window openings, replacement of external windows and doors, external landscaping works; permission granted.

5.0 Development Plan

5.1. County Donegal Development Plan 2012-2018

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

Relevant provisions include:

It is a policy of the Council to protect the integrity of the Shore Walks from Moville to Greencastle, Bundoran to Tullaghan, Buncrana to Stragill and the walkway encircling Trusk Lough, Ballybofey, by the management of development that would intrude upon or inhibit the amenities of those walks and surrounding areas, (NH-P-9)

The Council has designated Ardara, Ballyshannon, Moville, Ramelton and Raphoe as 'Heritage Towns'. Moville has a strong built and maritime heritage and enjoys spectacular views of Lough Foyle from Montgomery Park and has been designated a Heritage Town under the Heritage Towns scheme.

One of the most important aspects relating to tourism development is the need to enhance access into and around the County. The Council will focus on areas of tourism product development such as: marine leisure, walking routes, etc.

TOU-01 To develop a range of world class sustainable tourism products, based on the natural, built and cultural heritage, which provides a core resource for the industry.

TOU-08 To recognise the importance of walking routes and cycleways and to preserve public rights of way which give access to the seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility in the County, including those listed in Chapter 10 of the Plan.

CCG-P-7 It is a policy of the Council to provide benefits to the community including the provision of open space, recreational facilities and community facilities using sections 47 and 48 and any other provision of the Planning Acts, where such facilities are deemed necessary as a result of the development proposed.

CCG-P-25 It is a policy of the Council to facilitate access to cultural amenities through ensuring community accessibility and meeting the cultural needs of people with disabilities.

CCG-P-7 It is a policy of the Council to facilitate the appropriate development of cultural tourism products, which harness existing linkages across the County with regard to history, geography, economic development, folk traditions, language and musical heritage as well as activity based and marine tourism subject to the availability of necessary infrastructure, any environmental designation and in line with the proper planning and sustainable development of the area.

5.2. Natural Heritage Designations

Lough Foyle SPA (site code 004087) is located c 10 km from the site. Magilligan SAC on the opposite shore of Lough Foyle in Northern Ireland is c 5km away from site

6.0 The Appeal

6.1. Grounds of Appeal

Foyle Rowing Club have submitted an appeal against the decision to grant permission.

The grounds include:

The decision was based solely on proprietary rights of the applicant and the decision does not take into account the planning issues surrounding the application. The third parties sought that the planning authority protect its own rights and that of the users

of the pier; and to secure the proper planning and sustainable development of the area.

The development site in front of the premises was largely foreshore as reclaimed by public bodies and cannot be held to be in private ownership. They attach photographs and a map, in evidence. There is strong local objection to the proposal and other objections are attached which they request be read as part of their appeal. They consider that the application is invalid due to inaccuracies.

The development will close off and prevent access to an area of land in front of the premises that has historically been used by the public, since the 1800's, without impediment.

This loss of public land and public open space will further result in lack of space for manoeuvring, parking, storage etc, and will prejudice public safety and cause traffic hazard and create marine hazards: valid reasons for refusal in planning legislation.

The front of the premises, to which the subject application applies, has an open frontage and was until recently used for parking associated with the use of the adjoining pier and harbour; and has also been a viewing gallery during local water events. This land in front of the premises has thus been habitually used for public access, recreational enjoyment and recreational utility spanning some three centuries.

Given that permission is linked with the current application under appeal there could be a question as to the validity of the 16/50115 permission.

The application should have been referred to relevant prescribed bodies. The planning authority did not seek further information. A condition could have been imposed e.g. to secure public access by insisting that the retained public path be a minimum of 10/11 metres wide with no fencing or impediment thereon.

The car park was constructed by OPW on behalf of Donegal County Council and forms a raised platform above the slipway. The question arises as to the ownership of the reclaimed foreshore. The planner states that there is considerable doubt that this land would fall within the definition of foreshore; but this land was foreshore before the OPW reclaimed it.

There is no record of Donegal County Council or the OPW having conveyed the reclaimed foreshore to the applicant property. The third parties would expect vigilance in relation to claims against Council property; it built the slipway in the eighties as part of development of the harbour. The third parties question if maps of these works are still available. The harbour authorities charge the rowing club standing fees and the third parties question how this can be done if the Council does not have proprietary rights on the reclaimed foreshore.

The County Donegal Development Plan 2012 – 2018 includes a brief settlement plan for Moville. A more detailed local development plan is the Moville Development Plan 1994 and should be considered. This designated the harbour for general development only and there is no reference to residential development. It disallows any development which might impede developments in the harbour.

The Moville Area Strategy Plan 1994 commissioned by the North East Inishowen Tourism and Development Company also identified the need for a water based tourism / commercial activity, possibly based in front of Moville Pier.

TOU-0-8 of the CDP is cited: to recognise the importance of walking routes and cycleways and to preserve public rights of way which give access to the seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility in the county, including those listed in Chapter 10 of the Plan.

The proposed development would materially contravene this objective.

The premises and piers areas are of cultural importance given the maritime legacy, immigration point of departure, and the recent wooden sculpture on the stone pier in front of the premises to commemorate the latter.

CCG-P-7 and CCG -P-25 of the CDP are cited re. provision of open space and access to cultural amenities.

The development is not exempted; it includes both completed development – kerbs etc and proposed development.

The development constitutes obstruction of a public area and right of way habitually used by the public for what is now within its third century of use. Article 9(1)(x) of the Planning and Development Regulations 2001 is cited, which means that the development is not exempted.

A foreshore licence application should also be made.

Wrongly described – the application did not include for retention of works, although work has been carried out – the application is therefore invalid.

The application should be for retention and completion.

Enforcement action should be taken.

The third parties want to draw attention to plastic piping whose function has not been ascertained; also a passage that has been cut in the road surface, to a manhole within the pier.

Works continued after the planning officer visited the site following a complaint on 17th August 2016.

The use of a c/o address was not accepted in the past and they query why it was accepted in this case.

Following the Buncrana tragedy the local authority has commissioned a marine safety review of piers and harbours.

The planning authority should have consulted their marine section and the relevant government department and the HSA re. this application which seeks to develop on open space land adjoining and integral to the pier area with regard to marine safety. The development will mean the loss of very important areas for marine craft, trailers and vehicles using the pier, visitors, events and marine rescue services. This will cause congestion and traffic hazard and will endanger public safety. It would cause persons to use the slip way for parking, turning (as in the Buncrana tragedy) and storage, causing hazard and obstruction. The RoW will be diverted towards the edge of the slipway and adjacent of a high drop. The previous egress across the property will be narrowed, limited by a 6ft drop on one side and an advancing hedgerow in the other. The boundary wall is currently maintained by Donegal County Council and the third parties query who will now maintain it. The RoW will be vulnerable to erosion and winter storms and its viability will be at risk.

The slipway allowed fishermen and boatmen to pull their boat ashore, park against the western wall and be able to carry out necessary repairs there. It allowed lifting apparatus to be placed on the stand above. Will such heavy equipment be able to be stationed on the proposed narrow RoW? The planner has commented that the

walkway is compatible with other walkways at Bath Green, but is it compatible with use within the harbour?

Sightlines in accordance with the CDP are not shown.

No on-site effluent treatment is shown. In the original application for change of use, it was stated that there would be connection to the public sewerage system. There is no sewage treatment for the town. Merville Pier was the subject of a query regarding its suitability for a treatment plant or a pumping station (YA0007). The scheme as proposed is now defunct but a scoping exercise for a new solution is ongoing and will invariably involve Merville Pier.

An on-site system should have been proposed, with a site assessment test, and the third parties request the Board to address this matter.

Natura 2000 Sites – effects on the Lough Foyle SPA, including Magilligan Strand and SAC, at Magilligan opposite Greenscale, necessitates an appropriate assessment and a NIS should have been carried out.

Re. the land registry map – previous titles associated with the premises referred to a 1934 map in memorials attached to conveyances (1993 and 1982) ‘*the Anchor Hotel with the out offices and lands attached ...delineated and described on the map endorsed thereon*’. The 1974 memorial of an indenture of conveyance 1974 refers to the 1934 map marked red. The car park or slipway did not exist then but are now incorporated into the 2016 map. No previous owner laid claim to the use or ownership of the foreshore or reclaimed foreshore within the harbour precinct. The third parties attach a site plan scale 1:500 showing where the existing RoW exists and the reclaimed foreshore/car park. A feature, previously referred to as the pillar rock, the historical demarcation for the harbour, is now level with the road.

The first party acknowledges that a RoW exists across her property. The third parties query why this burden was not attached to the folio and how the vendor’s solicitors were aware of it.

Every assessment of the sustainable planning of Merville has involved Merville Harbour as a centrepiece to its development. The Montgomery family bought 800 Cunningham acres in Ballynally. In 1839 the Fisheries Board of the Irish Society obtained a lease of the Stone Pier and Anchor tavern and made an ice pond in

Ballynally Lane. All other occupants from that time have run a commercial enterprise from that premises.

The proposed development, besides being invalid, is disorderly, would materially contravene the development plans, would establish an inappropriate precedent for removal of public open space and public access; would raise serious H&S concerns and be contrary to the PP&SD of this area, an important and historic area, to the detriment of the local community, marine leisure, fishing interests and tourism.

This development, by obstructing the historic RoW and prohibiting the use of the car park, so used for over 20 years since its construction by the OPW, materially alters the enjoyments and rights which belong to the public heretofore; and is an insult to the memory of the hundreds of fishermen (600 in Moville) their families and current users of the Pier who established and maintained these rights and parts of the towns maritime history; and would be incompatible with and compromise future development there.

The submission is accompanied by copies of objections made to the planning application; a copy of extracts from Moville Development Plan 1994; and historic photographs including some from the Laurence collection and an oblique aerial photo all of which show the area to the front of the subject building as a hard surfaced open area, which surfaced area continues north-eastwards in the direction of the open space.

6.2. Applicant Response

AI Architects have responded to the grounds of appeal referring to the planner's report. The ground floor was the former licensed public house. Historically these premises were used as a ticket office for transatlantic liners, a hotel and then a pub. While in private ownership, the owners, who conducted these businesses, encouraged public access to their premises for the purposes of the continuance of their trade. The last such use ceased approx. a decade ago and the owner subsequently sold the license. There were no objections to the planning application earlier this year. The works associated with the change of use have now been completed. The current application relates only to changes to the boundary treatment at the front of the premises. These have arisen because the earlier

application was made prior to completion of the sale of the building. The site was not registered and the boundaries at the front were not defined. The legal boundaries were subsequently confirmed by the vendor and their advisers, as required to complete the sale. There is a public right of way across the front of the property and the owners wish to preserve this access while also protecting their privacy by defining the pathway and keeping people away from the ground floor windows, family bedrooms.

Responding to the grounds of appeal:

There were no objections to the previous application.

Unauthorised development – the building site area has been closed off with temporary metal meshing to prevent unauthorised access for reasons of security and to protect members of the public. The line of temporary fencing maintained a right of way outside this area and the intention was to top dress the gravel surface along this route with new material. The owner installed a standard concrete kerb along this line as a means of retaining the loose gravel while the building work continued. This feature also follows the line of the proposed landscaping that is the subject of the planning application, and therefore could be construed as being premature, however, the installation of a 150mm kerb does not seem unreasonable. It was confirmed by the enforcement officer that no unauthorised development has occurred and that details relating to the completion of the external works will be resolved in the course of the planning process.

There is only one party to the appeal and re. 'other local objectors' it would seem unfair to take these into account.

The photographs supplied by the third parties intended to support their case, clearly show that any of these areas that were previously foreshore, and subsequently reclaimed, are all outside the line of the proposed boundary to the front of the house.

The area in front of the house has always been in private ownership, although public access to customers was encouraged. By claiming public access to all parts of the premises the third parties are claiming a right that does not exist. The statement that the loss of public land and public open space will create hazard, is misleading, as the land in question is not and has never been in public ownership.

Re. validity of the previous permission, the third parties are not within their rights in seeking to influence this matter after the event.

None of the land is foreshore.

The 10-11 m wide public path suggested by the third party is without precedent. The public right of way which has been maintained is similar to that of the Moville shore walk and has proved adequate during construction works.

Re. questions raised about ownership. These are outside the planning authority's remit. Re. the rowing club premises, the harbour authority can charge fees because the harbour authority owns this land. The subject site is private land.

Matters of planning policy are dealt with in the planning report.

Re. plastic piping and manhole connections, these relate to the drainage serving the dwelling and were subject to road opening licence.

Re. applicants address, AI Architects have been retained to act on behalf of the first party.

Re. space for users of the pier, the first party's site does not provide such space as it is private land. A lot of the pier is taken up by temporary shipping containers and if there is concern about congestion, the harbour authorities have the means to address this.

Re. vehicle access, existing sight lines have been improved in the development by taking down and setting back the previous high boundary wall. The landscaping proposals do nothing to reduce these.

Re sewage disposal, the house removed sanitary facilities from two apartments and customer facilities within the former licensed premises and replaced them with facilities serving a 3 bedroom house, reducing the loading. The current application relates to boundary treatment.

There are no adjacent protected natural heritage sites nor would any development proposals justify appropriate assessment.

Re. legal title, the photographs contradict the maps submitted. Legal issues should be addressed to relevant authorities.

The applicant offered, to a public representative during the consultation of the planning process, to consider widening the pathway along the edge of the pier. This suggestion was not taken up by the third party, who is representing a number of different parties, as the submission demonstrates. Having been put to additional expense and stress, the first party is less willing to propose compromise.

6.1. Planning Authority Response

The matters raised were addressed in the planner's report.

6.2. Observation

Daniel & Brid McGinley – have submitted an observation on this appeal. The observation includes:

The Buncrana tragedy is a common theme all over the county. Sightseers visit the pier in Moville driving down to have a look. The proposal will block off the previously enjoyed car park which has acted as a viewing platform for as long as observer can remember (1986). No reference was made to a risk assessment in the planning decision, despite the dangers, and the proposed review being carried out by the planning authority.

Moville Pier is used for angling, crab fishing, diving, rowing, and by canoeists and kayakers. It is also used by jet skiers. Commercial activity involving large articulated lorries, vans etc, also occurs. Since the security fencing was installed patrons park elsewhere on the pier and occasionally block marked areas. It was previously possible to turn within the car park before exiting into the traffic.

The car park acts as a viewing platform for the Coast Guard, based in Greencastle. Lough Foyle is not visible from the R241; views of the water between Greencastle and Moville being very limited due to distance and tree belts intervening. There are only two points of access to that stretch of water: by driving down Lafferty's Lane and going on foot along the pathway north; and secondly to drive to Moville Pier. The waterway between Greencastle and Moville is a busy waterway. Kayakers from Inish Adventurers and rowers from Moville, use it frequently. The Coast Guard will now be

required to nose down the slipway or drive towards the 'Fid' and reverse, as no turning is available.

Observer is concerned regarding the diverted right of way. Many elderly are users of the right of way. There was a fatal accident some years ago along the Slí na Sláinte, when a woman had a fall.

Since there have been records, either in word or pictures, a recognised the right of way across the front door of the premises from Quay Street to Bath Green has existed. Postcards show a couple walking as if on the footpath outside any premises on Merville Street. There is no doubt that Merville Pier, Bath Green and Merville Shore path are the premier amenities associated with Merville. They form a continuum for enjoyment on Merville Shore. The grass area fronting Montgomery Terrace, the steps and pathway down to the pier and car park, form a wonderful amphitheatre during summer regattas and for the annual raft race. There are many pictures celebrating the fact, from the annual regattas, from the mid 1800's to the present day.

Previous easements have been extinguished in other areas and the 1994 plan refers to additional access points to the Merville Greencastle walk and a pedestrian link. The 2006 CDP policy BNH6: to protect shore walks and the integrity of the shore walk from Merville to Greencastle, was inserted in recognition of a threat of development adjacent thereto. The pier is the starting point of the shore and coastal walk and in this regard various guides are cited. The importance of the pier as a heritage area, in literature and in the history of emigration, is referred to.

The observer states that the property was advertised for sale as 2000sq ft, 0.2 acres and now has an area of 0.2 hectares. Attached to the submission are numerous photographs with references; extracts from publications; a list of publications; and a CD. In relation to the CD it is worth noting that videos show the wall to the east of the dwelling being used as a seating area with the adjoining green area open. Also there is a fence corresponding to the timber fence on the site forming the front of a viewing/starter's area. This is similar to other photographs provided to the planning authority and the Board. In all of the photographs and in the video, the area in front of the dwelling is open to the public and in public use.

7.0 Assessment

- 7.1. The issues which arise in relation to this appeal are appropriate assessment, the description of the proposed development and the established use of the area which is to be enclosed by a boundary.
- 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. **Description of the proposed development**
- 7.5. The proposed development is described as alterations to previously granted permission reference 16/10115 including external landscaping works and adjustment of site boundary to accord with land registry map.
- 7.6. This description has led the third parties to include in their submission issues (re drainage) which were determined in the previous application.
- 7.7. The development which was the subject of the previous application is not the subject of this application / appeal, rather issues which bear on the change in the boundary only, fall to be determined by the Board. In this regard it should be noted that the subject site is bounded on all sides by areas which are public. Notwithstanding that the response to the grounds of appeal states that the current application relates only to changes to the boundary treatment at the front of the premises, in addition to the areas which are referred to in the appeal there are other areas which are currently accessible to the public and which are shown within the amended site boundary; such as an area to the rear of the site at the junction of Foyle St and Montgomery Terrace.
- 7.8. Although the following section in relation to current use of the area which is to be enclosed within the site, refers to lands to the front and east of the dwelling, the impact of the outward extension of the other boundaries into areas currently used as public open space should also be considered.

7.9. Use of the area which is to be enclosed by a boundary.

- 7.10. The issues raised by the third parties and observer all relate to the established use of the area to be enclosed by the boundary, as a public area, used as a public amenity and in connection with marine activities, for parking and manoeuvring vehicles and boats, by pedestrians moving between the pier and the public open space at Bath Green and by the public using lands adjoining the building as a viewing area in connection with the more popular events which take place on the waterway. It is pointed out that the uses, to which the adjoining pier are put, are many and varied and that the entire area is an important public amenity; important in historic terms particularly in relation to the emigrants for whom it was the point of embarkation; and an area with further potential for development in relation to tourism and recreation. The development of a range of world class sustainable tourism products, based on the natural, built and cultural heritage, which provides a core resource for the industry is an important objective of the County Development Plan.
- 7.11. The first party accepts that a right of way exists across the property, but states that this is provided for by the area remaining outside the boundary.
- 7.12. The counter argument is made that the area directly along the front of the building has acted as a footpath and that the entire area to the front of the building was open to public use and was used for parking and turning vehicles. One of the points made in relation to the latter function is that it avoids the use of the slipway for turning; something which is cautioned against following the tragedy at Buncrana.
- 7.13. The grounds of appeal states that this development, by obstructing the historic RoW and prohibiting the use of the car park, so used for over 20 years since its construction by the OPW, materially alters the enjoyments and rights which belong to the public heretofore; and impacts on the memory of the hundreds of fishermen (600 in Moville) their families and current users of the Pier who established and maintained these rights and parts of the towns maritime history; and would be incompatible with and compromise future development there.
- 7.14. In relation to the diverted right of way being provided outside the proposed fence line, currently defined by a low kerb and a temporary security fence, among the objections to this provision is that it runs along a severe drop to the sea which poses a health and safety risk.

- 7.15. I accept that the pier in Moville is important in the life of the town and that it is important as part of its historic and heritage context.
- 7.16. I also accept that lands within the proposed boundary have been used by the public for access to the shoreline, as a pathway, for parking vehicles, for viewing events on the waterway, and for general amenity use. I am not satisfied, on the basis of the information on the file, that the first party is entitled to exclude the public from these areas or to restrain them from using these areas as they have been habitually used in the past.
- 7.17. In my opinion the proposed development would be contrary to the proper planning and sustainable development of the area because it would reduce the extent of public areas at this important amenity, Moville Pier; it would reduce the area available for parking and circulation where such reduction would constitute a traffic hazard; it would reduce the width of the public pathway and move it towards a steep sea edge; and would reduce the extent of green areas available for public amenity use; and this should be a reason to refuse permission.
- 7.18. **Validity of the application.**
- 7.19. The validity of the 16/50115 permission is called into question since that permission is linked with the current application under appeal.
- 7.20. The validity of current application is also called into question since development, which is the subject of the current application, has already been carried out.
- 7.21. As previously stated the development which was the subject of the previous application is not the subject of this application / appeal.
- 7.22. That development, which is the subject of the current application, has been carried out, such that retention and completion of the development is necessary, has been raised as an issue. The first party response is that the concrete kerb was installed as a means of retaining loose gravel while the building work continued, and that it could be construed as being premature because it follows the line of the proposed landscaping that is the subject of the planning application, but argues that it is a minor matter.
- 7.23. In my opinion, notwithstanding that the application involves retention, the description of the development did not prejudice third parties involvement in the

application/appeal and in light of my recommendation to refuse permission I do not consider that any amendment of the application description or notices is necessary arising from the partial implementation of the proposed development.

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 considered that the proposed development would enclose land, previously accessible to, and enjoyed by the public, prohibiting public access thereto, and reducing the amenity value of the Pier, the waterway and the shoreline walk; and would, therefore, be contrary to the proper planning and sustainable development of the area.
2. The reduction in parking and circulation space at this land sea interface, to which the proposed development would give rise, would be likely to result in traffic turning movements, in a more confined space, closer to the water's edge, which would endanger public safety.
3. The proposed development would reduce the width of the path available for walking and move it closer to the cliff edge which would endanger public safety.

Planning Inspector

1st February 2017

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