



An
Bord
Pleanála

Inspector's Report 05E.248191

Development	Retention of partial reduction of ground levels, site clearance, deposition of gravel and soil material with screen planting.
Location	Derrybeg, Letterkenny. Co. Donegal
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	16/51875
Applicant	Eamon O'Boyle
Type of Application	Permission
Planning Authority Decision	Refuse Permission.
Type of Appeal	First Party v Refusal
Appellant	Eamon O'Boyle
Date of Site Inspection	7 th July 2017
Inspector	Dolores McCague

1.0 Site Location and Description

- 1.1. The subject site is a rectangular area of ground, with its narrow end running along the road. The site is located at Derrybeg, Letterkenny. Co. Donegal which is on the edge of the dispersed settlement at Doirí Beaga or Derrybeg. The site is separated from the main part of the settlement by two rivers which join west of the road as Abhainn an Choitinn (the Catheen River), flowing through wetlands for the short remaining distance to the sea. The wetland is part of the Gweedore Bay & Islands SAC.
- 1.2. The site is located on the Regional Road R257 at a bend on the road. To the south there is an entrance to a single storey dwelling with a front roadside boundary following the curve of the road. The dwelling is set back about 12m from the front boundary, with its narrow axis towards the road and its long axis running at a slight angle to the subject site. The southern boundary of subject site adjoins this dwelling site. The rear boundary adjoins the grounds of another dwelling site to the east, which accesses the regional road further south. Natural ground with locally occurring vegetation bounds the site to the north.
- 1.3. The adjoining dwelling to the south is close to the site boundary and has several windows facing the subject site.
- 1.4. A splayed access from the road, which appears to have been improved, opens to a driveway (slightly excavated, levelled and hard cored) extending through the front portion of the site, which is otherwise relatively undisturbed ground, to the rear portion which is gated and fenced and has been excavated, levelled and surfaced with broken stone. This area, occupying the full width of the site for over half the site area, located to the rear of undisturbed ground and screened by low vegetation, has limited visibility from the roadside. A timber gate on the driveway, and a timber post and rail fence secures the surfaced area to the rear of the site. The land within the site is slightly higher than the road.
- 1.5. The excavation, which is up to 3½m in depth, extends to the adjoining boundary and therefore close to the garage and dwelling on that site.
- 1.6. The site is given as 0.102ha.

2.0 Proposed Development

- 2.1. The proposed development is the retention of partial reduction of ground levels, site clearance, deposition of gravel and soil material with screen planting.
- 2.2. A letter of consent to the making of the application, from Michelle O'Donnell, is enclosed with the application documents.
- 2.3. Drawings accompanying the application indicate the former land levels, the current levels and the proposed reinstatement. It is proposed to retain the reduced site levels over most of the site, to provide layers of: coarse stone fill, 150mm graded gravel, 150mm topsoil rolled and laid to grass; to provide a steep embankment in lieu of the sheer excavation at the southern and eastern boundaries. Laurel hedging is proposed towards the top of the embankment. The proposal is shown in sections but not on plan. It is proposed to cover most of the hard surfaced area with 150mm topsoil, retaining the gravel surface on the driveway.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The planning authority decided to refuse planning permission for the following reason.

The development proposal is for retention permission for partial reduction in site levels, site clearance and deposition of gravel and permission for the deposition of soil material complete with screen planting along the southern site boundary and all associated site works. Having regard to (i) the absence of a plausible rationale or proposed associated use for the element of the development for which retention permission is being sought, and (ii) the fact that the works proposed for permission are directly associated with the proposal for retention permission, which is not considered appropriate, it is the opinion of the Planning Authority that the proposed development in its entirety, constitutes a disorderly, haphazard and substandard form of development without purpose, justification or rationale and which would if permitted be prejudicial to the rural and scenic amenities of the area, and contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Report:

3.2.2. The planning report outlines the planning history, the access constraints and refers to the condition of the site prior to development:

3.2.3. 16/5130 previous retention application refused; and UD1386 the enforcement file in relation to the development the subject of this application / appeal.

3.2.4. While the development proposal does make provision for soil deposition, grading and landscaping along the southern site boundary, which would go some way to addressing the visual outlook available to the third party dwelling, the development proposal in its entirety has still not been put forward as part of a defined practical use, which will enable the planning authority to make a robust assessment of the proposal and an associated use. The planning authority (PA) considers it highly unlikely that this level of development would have been carried out to date merely for the lands to be overlaid with topsoil and used for cultivating vegetables. It was considered in 16/51340, which was refused, it remains a consideration of the PA that there is no authorised or plausible exempted ancillary uses for the physical works which are sought to be retained and it is further considered that the development should be refused in the absence of a firm proposal for development of the site which the development works to date might be associated.

3.2.5. A further proposal for development would need to take cognisance of the location of the site close to a bend in the road where visibility splays are severely limited and which would be an issue of concern for the Planning Authority.

3.2.6. The appearance of the site prior to development is illustrated in a photograph, which appears to be taken from google street view.

3.2.7. An Appropriate Assessment screening report accompanies the planning report. It includes the site synopsis for the Gweedore Bay & Islands SAC (Site Code 001141) which is within 100m of the subject site, the conservation objectives for the SAC, and concludes, based on the fact that there has been no direct loss or fragmentation of the habitat, the limited scale of the works, that no use is proposed, and the scale and extent of existing development in the area, closer to the Natura site; that appropriate assessment is not required.

3.2.8. Observation

3.2.9. An observation made by Mr O'Boyle, the owner of the adjoining property, to the planning authority has been read and noted. It includes:

3.2.10. He does not accept that this second attempt to overturn the work carried out: rock breaking, excavating large amounts of soil and erecting a pole, is for the purposes of growing vegetables. He does not want to go to the expense of rectifying his mistake.

3.2.11. The first party brought a rock breaker onto the site and spent weeks excavating rock, then he proceeded to fill the area with gravel. He has stated his intention to put a shed on the site to store building equipment. He erected a pole, for either electricity or a phone line. He used the site to store building equipment. As the Council have shown, in the photographs that were submitted, he has done damage to the observer's retaining wall and fence. There was a previous application on the land in the name of Michelle O'Donnell for a hairdresser's salon and dwelling, which was refused. First party removed soil and now needs to put it back for vegetable growing. Observer does not accept his intentions. The proposed screen hedge will obstruct observer's view and conceal the plant storage facility. The work was started when first party knew that the adjoining house was unoccupied. The site should be fully restored to its former level.

4.0 Planning History

16/5130 previous retention application, permission refused.

UD1386 the enforcement file in relation to the development the subject of this application / appeal.

15th July 2013 warning letter in relation to the carrying out of works, including the substantial breaking of rock, alteration of site levels and the creation of a hardstanding area on lands.

25th February 2015 enforcement notice issued in relation to the substantial alteration of levels of a previously sloped field including the breaking of rock to form a level yard; the application and consolidation of graded stone aggregate to form a hard stand; and the making of a material change of use of land by the placement and storage thereon of building and construction materials.

5th November 2015 Manager's order for prosecution.

Per objectors letter on 16/51340 date of court hearing scheduled for 13th September 2016, 16/51340 lodged 12th September 2016.

10th February 2017 matter currently adjourned in court, pending decision on this application.

5.0 Policy Context

5.1. **Donegal County Development Plan 2012-2018** is the operative plan. Relevant provisions include:

Derrybeg is identified as a tier 3 settlement, listed among the strong towns and villages. It is referred to in the plan with reference to development of Gaeltacht areas and the settlement framework map for Bunbeg Derrybeg (map 7) shows the development boundary extending to south of the subject.

5.2. Natural Heritage Designations

Gweedore Bay & Islands SAC (Site Code 001141).

Coastal lagoons

Reefs

Perennial vegetation of stony banks

Atlantic salt meadows

Mediterranean salt meadows

Embryonic shifting dunes

Shifting dunes along the shoreline with *Ammophila arenaria* (white dunes)

Fixed coastal dunes with herbaceous vegetation (grey dunes)

Decalcified fixed dunes with *Empetrum nigrum*

Atlantic decalcified fixed dunes (Calluno-Ulicetea)

Dunes with *Salix repens* ssp. *argentea* (Salicion *arenariae*)

Humid dune slacks

Machairs (* in Ireland)

Oligotrophic to mesotrophic standing waters with vegetation of the Littorelletea uniflorae and/or Isoeto-Nanojuncetea

European dry heaths

Alpine and Boreal heaths

Juniperus communis formations on heaths or calcareous grasslands

Euphydryas aurinia (Marsh Fritillary)

Lutra lutra (Otter)

Petalophyllum ralfsii (Petalwort)

Najas flexilis (Slender Naiad)

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. The appeal on behalf of the first party to the decision to refuse permission has been submitted by Harley Newman, planning consultants.
- 6.1.2. The grounds of appeal includes:
- 6.1.3. Mr O'Boyle lives less than 200m from the site. The family lands have lain unused and unkempt. It was his intention to clean it up and create a more level surface, which could facilitate some form of practical use. Through a combination of ground reduction and spreading of rock material broken on site, as a means of even deposition, sought to form ground of more even level. This application addressed the reasons for refusal in 16/51340 by seeking permission for the deposition of soil material complete with screen planting along the southern boundary. This would allow for amelioration of the level differences between the site and the neighbouring property to the south, the screen planting would protect the residential amenities of the adjoining property.
- 6.1.4. The rationale for the works is given as:
- 6.1.5. It has been the intention to create a more level surface which would facilitate some form of practical use of their land into the future. The applicant may decide, following

the carrying out of the remedial boundary works, to cultivate the lands for the growing of vegetables for their own domestic use.

- 6.1.6. The PA considers it highly unlikely that this level of development would have been carried out to date merely for the lands to be overlaid with topsoil and used for cultivating vegetables, and that the proposal has not been put forward as part of a defined practical use which would enable a robust assessment.
- 6.1.7. The first party considers this unfair and that the application should have been assessed as presented.
- 6.1.8. The attempt to clean up the site resulted in a greater level of material and soil being removed than originally intended. A brief and temporary placement of bars and timber resulted in the mistaken belief that the intention was to use the land for some form of permanent storage facility. A letter from the first party is enclosed.
- 6.1.9. The first party considers that their application to partially reinstate the land should be considered on its merits rather than any misplaced focus on plausible future intentions. The PA has available sufficient powers under planning legislation to regulate any other activity on the lands.
- 6.1.10. The proposed reinstatement would remedy the earlier works carried out. A refusal would demand the full reinstatement of all removed material and would not be reasonably warranted or necessary.
- 6.1.11. The proposal would not affect the scenic amenities of the area.
- 6.1.12. The accompanying letter, from the first party, states that the land had become overgrown and in poor condition and something of a dumping ground.
- 6.1.13. He asked a man who operated a digger to clean up and level the ground. Greater levels of material were removed than had been anticipated, in order to create a level area. Rock encountered was broken down and spread on the surface. When he became aware of the need for planning permission he was glad to comply. The placement of material on the site was a once-off, temporary situation. He does not intend to use the site for commercial purposes. He intends to return it to grass and perhaps vegetable growing.

7.0 Assessment

- 7.1.1. The issues which arise in relation to this appeal are appropriate assessment, acceptability of the proposed remediation, and the future use of the site and the following assessment is dealt with under these headings.

7.2. Appropriate Assessment

- 7.2.1. In accordance with obligations under the Habitats Directives and implementing legislation, to take into consideration the possible effects a project may have, either on its own or in combination with other plans and projects, on a Natura 2000 site, there is a requirement on the Board, as the competent authority, to consider the possible nature conservation implications of the proposed development on the Natura 2000 network, before making a decision on the proposed development. The process is known as appropriate assessment. In this regard a guidance document 'Appropriate Assessment of Plans and Projects in Ireland' was published by the DoEH&LG on the 10 December 2009.
- 7.2.2. The protected site Gweedore Bay & Islands SAC (Site Code 001141), is located less than 100m from the subject site.
- 7.2.3. The development carried out on site and which is the subject of retention includes removal of vegetation, site excavation and rock breaking. The pre-existing situation is not documented. The proposed development includes the carrying out of further works. No Natura Impact Statement was submitted as part of the application.
- 7.2.4. Site specific conservation objectives have been developed for the Natura site.

- 7.3. The habitats and species for which the site has been designated are:

Coastal lagoons

Reefs

Perennial vegetation of stony banks

Atlantic salt meadows

Mediterranean salt meadows

Embryonic shifting dunes

Shifting dunes along the shoreline with *Ammophila arenaria* (white dunes)

Fixed coastal dunes with herbaceous vegetation (grey dunes)
 Decalcified fixed dunes with *Empetrum nigrum*
 Atlantic decalcified fixed dunes (Calluno-Ulicetea)
 Dunes with *Salix repens* ssp. *argentea* (Salicion *arenariae*)
 Humid dune slacks
 Machairs (* in Ireland)
 Oligotrophic to mesotrophic standing waters with vegetation of the Littorelletea
uniflorae and/or Isoeto-Nanojuncetea
 European dry heaths
 Alpine and Boreal heaths
Juniperus communis formations on heaths or calcareous grasslands
Euphydryas aurinia (Marsh Fritillary)
Lutra lutra (Otter)
Petalophyllum ralfsii (Petalwort)
Najas flexilis (Slender Naiad)

7.3.1. Conservation objectives are set out by the NPWS for each of the qualifying interests, which are generally aimed at maintaining their favourable conservation condition. Maps are provided with the conservation objectives and include areas located near to the subject site, relating to Mediterranean salt meadows and otter.

7.4. Having regard to the nature and location of the proposed development and in the absence of a NIS, the Board has before it insufficient information to determine that the proposed development will not adversely affect the integrity of the European site Gweedore Bay & Islands SAC (Site Code 001141). Since it cannot be concluded that the plan or project would not adversely affect the integrity of the European site in view of the site's Conservation Objectives the Board is precluded from granting permission.

7.4.1. **Acceptability of the Proposed Remediation**

7.4.2. As part of the application to retain the works carried out and the reduced site levels, it is proposed to provide an embankment using layers of coarse stone fill, 150mm

graded gravel, and 150mm topsoil rolled and laid to grass, along the excavation at the southern and eastern boundaries and to plant laurel hedging towards the top of the proposed embankment.

- 7.4.3. The proposed remediation will still involve a steep embankment. Having regard to the depth of the excavation and its proximity to the adjoining site and dwelling, I consider that a proposal for a steep embankment such as that proposed should be accompanied by a report prepared by an engineer or other suitably qualified person which includes an assessment of the angle of repose of the materials to be used in its construction.
- 7.4.4. I note the intention to provide a layer of topsoil on part of the hard surfaced area, its purpose is unclear. This is referred to further in relation to the future use of the site.

7.5. Future Use of the Site

- 7.6. The grounds of appeal states that it has been the applicant's intention to try to create a more level surface which could facilitate some form of practical use of their land into the future and that it is proposed to cultivate the lands for the growing of vegetables for their own private domestic use. It further states that the temporary use to which the site was initially put, that of storing building materials, gave a misleading impression, and that there is no intention of using the lands for any commercial purpose.
- 7.7. The reason for refusal in the planning authority's decision included the absence of a plausible rationale or proposed associated use for the element of the development for which retention permission is being sought.
- 7.8. The grounds of appeal, referring to the planning authority's consideration that it highly unlikely that this level of development would have been carried merely for the lands to be overlaid with topsoil and used for cultivating vegetables, and that the proposal has not been put forward as part of a defined practical use which would enable a robust assessment, considers this an unfair assessment and that the application should have been assessed as presented.

- 7.9. I share the planning authority's disbelief that the works carried out, to provide a flat hard surface, which is only now to have a layer of topsoil added, was for the purpose of vegetable growing.
- 7.10. In my opinion the absence of a plausible rationale or proposed associated use is a reason to refuse permission for the retention 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 The proposed retention of the site clearance, site excavation, including rock breaking and the deposition of hard core together with the further works now proposed, having regard to the absence of a plausible rationale or proposed associated use for the development for which retention is being sought, would constitute a disorderly, haphazard and substandard form of development without purpose, justification or rationale which would if permitted be prejudicial to the rural and scenic amenities of the area, and contrary to the proper planning and sustainable development of the area.

2 In the absence of satisfactory evidence as to the suitability of the materials and of the slope at which they would be laid, to stabilise the excavation, it cannot be concluded that the proposed remediation would be an acceptable solution, the proposal would therefore be prejudicial to safety and contrary to the proper planning and sustainable development of the area.

3 On the basis of the information provided with the application and appeal and in the absence of a Natura Impact Statement the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on the European site, Gweedore Bay & Islands SAC (Site Code 001141), in view of the site's Conservation Objectives. In such circumstances the Board is precluded from granting permission.'

Planning Inspector

25th July 2017

Appendices

- 1 Photographs
- 2 Extracts from Donegal County Development Plan 2012-2018
- 3 Site Synopsis Gweedore Bay & Islands SAC (Site Code 001141)
- 4 Extract from NPWS on-line mapping showing part of the Gweedore Bay & Islands SAC