



An
Bord
Pleanála

Inspector's Report PL05E. 248403

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| Development | Retain alterations at coal depot |
| Location | Bauville, Keeloges and Clonglash, Buncrana, Co. Donegal |
| Planning Authority | Donegal County Council |
| Planning Authority Reg. Ref. | 16/51749 |
| Applicant | Andrew Coyle |
| Type of Application | Permission |
| Planning Authority Decision | Grant permission subject to conditions |
| Type of Appeal | Third Party vs. Grant & 1 st party vs. conditions |
| Appellants | 1. Martin Hegarty and Paddy Grant 2. Andrew Coyle |
| Observer | None |
| Date of Site Inspection | 2 nd August 2017 |
| Inspector | Stephen J. O'Sullivan |

1.0 Site Location and Description

1.1. The site is in a rural area c3km east of the town centre at Bunrana. It lies on a county road whose carriageway is c5.4m wide. There are numerous one-off houses in the area, including one to the north of the site and another across the road. The site is occupied by coal merchant. The vehicular access to the site is the western end of the front boundary. Car parking and fuel pumps lie on the site near its entrance. A building containing equipment to bag coal stands near the centre of the site, to the west of which is an office building and a smaller storage shed. Loose coal was stored at the rear of the site at the time of inspection, with pallets of bagged coal stacked between the buildings and the front of the site. A berm has been erected along part of the front boundary of the site, while a row of trees stands on part of the western boundary.

2.0 Proposed Development

- 2.1. It is proposed to retain various alterations at the coal depot, including
- the extension of a shed and its use for bagging coal,
 - the extension of a storage yard,
 - a concrete boundary wall, bank and fence,
 - pumps serving diesel and heating oil to the public, the installation of a mechanical coal sorter,
 - signage on an office building and
 - another shed on the western boundary where bagged coal is stored.

It is also proposed to extend an embankment along the southern and eastern site boundary.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission subject to 20 conditions.

Condition no. 2 required the provision of visibility splays of 70m in each direction from a point 2.4m from the road edge at the entrance to the site, and that the existing embankment at the front of the site be removed and a new one installed to achieve this.

Condition no. 6 required a landscaped berm 3m high to be built along the western boundary of the site.

Condition no. 9 omitted the pumps for diesel and home heating oil from the development and stated that no private fuel sales to motorists would occur within the site. The reason referred to traffic safety, residential amenity and orderly development.

Condition no. 10 restricted the hours of operation to 0900-1800 hours Mondays to Saturdays to cater for orderly development and residential amenity.

Condition no. 15 stated that noise levels measures at the nearest house shall not exceed 40dBa above ambient during the hours of operations to cater for orderly development.

Condition no. 17 required a fire hydrant to be installed on a watermain in the road within 50m of the site to obviate fire hazards.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report refers to the planning history of the site, in particular the original grant under 05/70314, and to policies ED-P-9 and -12 of the development plan. The principle of development was established by 05/70314 that authorised the facility on 0.95ha with 85m of road frontage and a depth of 140m, but without fuel pumps for the public. Subsequent changes require assessment. The bagging facility is acceptable, as is the storage shed, subject to the provision of better visual screening. A grant of permission was recommended.

3.2.2. Other Technical Reports

The Road Design Section stated that adequate visibility splays needed to be demonstrated.

The Fire Officer raised no objection, subject to conditions.

3.3. Third Party Observations

Third parties objected to the development on ground similar to those raised in the subsequent appeal.

4.0 Planning History

Previous planning applications for the site include –

Reg. Ref. 05/70314 – the planning authority granted permission to retain and complete a commercial fuel depot.

Reg. Ref.07/71243 – the planning authority granted permission to erect an office building and storage units on the site

Reg. Ref. 10/70181 – the planning authority granted permission for a storage unit on the site.

Reg. Ref.14/50841 – the planning authority granted permission to retain an extension of a coal storage yard and concrete walls.

Reg. Ref. 15/51584 – the planning authority granted permission to retain and extend the office building on the site.

Reg. Ref. 16/50427 – the planning authority refused permission to retain a storage shed and extensions to a coal bagging shed on the grounds that the bagging shed which had been extended did not have the benefit of planning permission.

5.0 Policy Context

5.1. Development Plan

The Donegal County Development Plan 2012-2018 applies. Policy ED-P-9 of the plan is to permit economic development uses in the countryside of certain types, including the expansion of an existing economic development use in accordance with Policy ED-P-12, which is to permit proposals for the expansion of an existing economic development in the countryside provided the scale and nature of the

resultant development will not harm the rural character of the area; there is no major increase in the site area of the enterprise; and the existing infrastructure (including the road network) can facilitate the expanded development. Policy ED-P-16 is 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;

- (a) 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

5.2. Natural Heritage Designations

None.

6.0 The Third Party Appeal

6.1. The Grounds of the Third Party Appeal

- There is a history of the operation on the site failing to conform with the requirements of previous planning permissions. This indicates that the conditions on the planning authority's decision are not capable of implementation either, including those relating to visibility splays, drainage, noise and lighting.
- The development would contravene the provisions of the development plan, including policies ED-P-9, 12 and 16 because of the impact that an operation of this scale has on the character of this rural area which is much more significant than that which arose from the facility which was granted permission in 2005 having regard to the public sales, stockpiling of fuel, the mechanical sorting of coal that have since occurred, their visual impact and noise, and to the failure to provide the berms and screening required under the permission. These issues were not properly considered in the planner's report. The development is clearly visible from the public road. There has been a major increase in the size of the site by 0.48ha.
- Inadequate visibility splays have been provided at the site entrance giving rise to traffic hazard.
- Adequate drainage infrastructure has not been provided, with no evidence of silt traps or oil interceptors. Proper information has not been provided regarding water supply or the septic tank system.
- The use should be located in lands zoned for industrial use within the town of Buncrana. It is not appropriate for a rural area and so contravenes policy ED-P-16 of the development plan. The extended hours of operation and the noise and dust which it generates have injured the amenities of local residents and have had a negative impact on the landscape. The infrastructure in the

area is not adequate to support the development with respect to roads, water or drainage.

6.2. **Planning Authority's Response**

The planning authority did not respond to the appeal.

6.3. **Applicant's Response**

- The fuel depot is a long established business with 23 employees. The development to be retained is ancillary to the authorised and established business and is mainly concerned with the shed authorised under 10/70181 and the change of use from storage shed to bagging. A wide range of works were undertaken to ensure the operation complies with the relevant statutory requirements which are set out in an attached compliance report.
- A bagging operation is required to maintain the business's viability in a market in which demand is now for smaller quantities of bagged coal rather than for larger bulk deliveries. The applicant has another facility in Derry and the one on the site is not involved in cross-border trade.
- The proposed development does not involve a significant increase in the area of the site. There would be no increase in loose coal storage. It is mainly a proposal for an indoor process and so policy ED-P-16 is not applicable. Its retention would not unduly impinge on the rural character of the area.
- Adequate sightlines of 70m by 2.4m can be provided at the site entrance, as shown on a submitted plan.
- Noise and dust emissions from the development would remain within applicable limits and would not cause significant injury to the amenities of nearby properties, as demonstrated by a submitted monitoring report .

6.4. **Further Responses**

The third party's response to the applicant's response to the third party appeal can be summarised as follows-

- The existing shed whose use for the bagging of coal is proposed to be retained was originally authorised for storage only under Reg. Ref. 10/70181 and restricted to such by condition no. 2 of the that permission. The subsequent erection of a larger shed in a different location for bagging brought coal processing closer to houses than was approved under the 2005 permission, illustrating the history of non-compliance on this site. An environmental impact assessment is required to assess systematically the environmental impacts of the development that has expanded incrementally over the past decade.
- The appellants do not accept that the impact of the operation on their amenities has been minimal. Policy ED-P-16 is not applicable as it is a 'catch all' planning policy. The development does not meet the requirements of ED-P-12 due to its visual impact, pollution from noise, light and dust and its impact on the rural character of the area. The proposal has resulted in a major intensification in the use and extent of the development. Aerial photos are submitted which, it is claimed, show pallets of coal stored outside the site. Correspondence from the county council and the HSE are submitted which stated that the deposition of more than 350mg/m²/day were recorded at the Hegarty's property. Photographs are also submitted to show coal dust there. These reports should be given more weight than those submitted by the applicant's consultants who only visited the site twice and did not refer to the existing noise limits at the site. Videos are submitted illustrating the generation of noise by the activities at the site and moving vehicles. The proposed development would bring coal processing closer to houses and it is not credible to argue that it would not have a significant negative effect in this regard. Traffic has been coming and going from the site well outside the required operating hours, with HGVs queueing outside the appellants' houses from 7.30 am. There is a particular issue following the unloading of coal boats at Derry. The signage on the site demonstrates that the facility on the site does not observe the required operating hours. Therefore the intensification and piecemeal unauthorised development has created a new planning unit at this location. Conditions requiring compliance with noise and dust emissions have no credibility having regard to the history of the site. Personal letters

from the appellants were submitted describing these nuisances, as well as to a bonfire on the site.

7.0 The First Party Appeal

7.1. The Grounds of the First Party Appeal

- The appeal is against conditions nos. 2, 6, 9, 10 and 17 of the planning authority's decision.
- The required visibility splays of 70m by 2.4m can be provided at the site entrance without the need to dismantle the existing berm and build a new one, as condition no. 2 stipulates. A site plan is submitted to illustrate how this can be done. Condition no. 2 should therefore be amended to retain the requirement to provide the visibility splays but remove the one to demolish the existing berm.
- The requirement in condition no. 6 for a berm on the western site boundary appears to be superfluous and possibly an error. A berm is proposed on the eastern site boundary.
- The pumps on the site which serve diesel and heating fuel to the public are small in scale and long established, and cater mainly to local farmers. Their retention should be allowed and condition no. 9 omitted.
- Normal working hours should begin at 0800 to allow deliveries to be arranged to customers' premises at the start of the working day, and condition no. 10 amended accordingly.
- The water supply for the site is from a well, so the requirement in condition no. 17 for a hydrant on a public watermain is not justified.

7.2. Planning Authority's Response

The planning authority did not respond to the appeal.

7.3. **Third Party Response**

The third party's response to the first party appeal asserted that the planning history of the site illustrated that conditions were not an appropriate means to control the activity there.

8.0 **Assessment**

8.1. The planning issues arising from the proposed development can be addressed under the following headings –

- EIA and AA screening
- Compliance with previous permissions
- The principle of development
- Emissions
- Traffic and access
- Impact on the landscape
- Impact on residential amenity
- Condition no. 17 of the planning authority's decision

8.2. **EIA and AA Screening**

The development does not within the categories set out in schedule 5 of the planning regulations and so is not subject to a requirement for environmental impact assessment. The development is not in or adjacent to any Natura 2000 site and it would not involve processes that would lead to emissions that would have downstream effects on such a site. It would not, therefore, be likely to have significant effects on a Natura 2000 site and is not subject to a requirement for an appropriate assessment.

8.3. Compliance with previous permissions

A planning authority or the board may not use its power to determine applications for planning permission under Part III of the planning act in order to achieve the objectives of Part VIII of the act or to circumvent or replace the enforcement procedures laid down in the latter part. Rather the decision on a planning application needs to be based on whether or not the proposed development would be in keeping with the proper planning and sustainable development of the area. This applies whether the carrying of the proposed development is to be analysed prospectively or retrospectively in cases where EIA or AA is not required. The board's assessment may not be based on assumption that a person would not comply with their legal obligations under the planning act or any permission granted under it. There is a procedure under section 35 whereby past failures to comply with such obligations can be used as a basis for a decision on application for permission. It relies on the planning authority forming an opinion that is subject to review by the courts. It may not be invoked by the board. Given these constraints, the various comments from the third party regarding previous unauthorised development and the likelihood of compliance with conditions attached to a permission that might issue in this case would not justify refusing permission.

8.4. The principle of development

The use of the larger part of the site for a commercial fuel depot is authorised under previous permissions, most notably that granted under Reg. Ref. 05/70314. The current proposal should therefore be regarded as an expansion of an established commercial enterprise to which the development plan policy ED-P-12 applies. Having regard to the relative scales of the authorised business and that whose retention is proposed, it is not considered that the scale and nature of the resultant development would harm the rural character of the area, or that it would involve a major increase in the site area of the enterprise, or that the existing infrastructure of the area including its road network could not facilitate the expanded development, provided controls were placed on it regarding boundary treatments, emissions and hours of operations. The principle of the proposed development is therefore supported by this provision of the development plan. It is noted that policy ED-P-16

sets out various criteria regarding economic development. However these are generic planning criteria that would apply in any case.

The sale of fuel from the site to visiting customers is a small part of the commercial operation on the site and one that could reasonably be regarded as ancillary to the main operation. The retail use involves the sale of bulky items and would not impinge on the commercial role of the nearby town. As such its retention would be acceptable.

8.5. Emissions

The proposed development would involve the operation of machinery and the sorting of coal. It would therefore have the potential to cause emissions of noise and dust that could impinge on the local environment and the amenities of nearby properties. However the bagging operation would be largely housed within the structure whose retention is proposed, while the coal stored at the front of the site would be bagged with the loose coal at the back of the site. It is therefore considered that noise and dust emissions from the development could be restricted to acceptable levels, and that it would be appropriate to specify such limits by conditions attached to a permission. These limits should refer to emissions from the operations on the site as a whole, as it would not be practicable to distinguish between emissions from different elements that may have been previously authorised.

8.6. Traffic and access

The condition and width of the road serving the site are reasonable. There is a restriction on the forward visibility available to the east of the access to the site. The applicant has submitted proposals to provide 70m visibility in this direction from a point 2.4m to the rear of the carriageway without the need to replace the berm there. On inspection of the site it appeared that this proposal is capable of implementation. Subject to this, the development would not give cause a hazard or obstruction to traffic.

8.7. Impact on the landscape

The site is in a rural area that is elevated relative to Buncrana and Lough Foyle. However the landscape is relatively robust and its scenic amenity is not particularly vulnerable. The facility upon it could be satisfactorily screened and integrated into the landscape if the existing berm was extended along the southern and eastern site boundary, and the height to which the loose and bagged coal is stacked was limited to less than the height of the berm. This could be required by condition. The existing belt of trees on the western boundary provides adequate screening in that direction.

8.8. Impact on residential amenity

Subject to proper control on emissions and the completion of landscaping around the site, such as could be reasonably and practicably required by conditions attached to a grant of permission, the development would not have an undue impact on the residential amenities. Such conditions should apply to the operations on the site as a whole, as it would not be practicable to differentiate between the impact arising from previously authorised parts of the depot and those elements with which this application is concerned. With regard to the hours of operation, opening at 0800 would not represent a threat to amenity and would be in keeping with the working times commonly required under planning permissions. I note the arguments from the appellants regarding previous failures to implement similar planning conditions. However, as stated in section 8.3 above, the opportunity to make submissions on a planning application or to appeal the decision of a planning authority does not provide an alternative to the enforcement remedies set out in Part VIII of the act that can be sought from the planning authority or the courts, but not from the board.

8.9. Condition no. 17 of the planning authority's decision

While the water supply for the site may come from a private source, it would be reasonable for another source to be available close to the site for fire-fighting purposes. The requirement for a hydrant on the public supply in condition no. 17 of the planning authority's decision is therefore reasonable.

9.0 Recommendation

9.1. I recommend that permission be granted subject to the conditions below.

10.0 Reasons and Considerations

The proposed development would involve the expansion of an established commercial operation which, subject to compliance with the conditions below, would not injure the rural character of the area or the amenities of property in the vicinity of the site, and which would be acceptable in terms of traffic safety and convenience. It would therefore comply with policy ED-P-12 of the Donegal County Development Plan 2012-2018, and would be in keeping with the proper planning and sustainable development of the area.

11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. The business on the site, and all activities occurring thereon, shall only operate between 0800 hours and 1800 hours, Monday to Friday and between 0800 hours and 1400 hours on Saturdays. No activity shall take place outside these hours or on Sundays or public holidays.

Reason: In order to protect the residential amenities of property in the vicinity.

3. Any exterior lighting on the site shall be arranged to prevent glare or spillage occurring on the public road or at any residential property in the

vicinity, and shall not be lit outside of the operating hours specified under condition no. 2 above.

Reason: In the interests of traffic safety and residential amenity

4. Dust levels at the site boundary shall not exceed 350 milligrams per square metre per day averaged over a continuous period of 30 days (Bergerhoff Gauge).

Reason: To control dust emissions arising from the development and in the interest of the amenity of the area

5. (a) During the operational phase of the proposed development, the noise level arising from the development, as measured at the nearest dwelling or [at any point along the boundary of the site shall not exceed:-

- (i) An Leq,1h value of 55 dB(A) during the period 0800 to 1800 hours from Monday to Saturday inclusive.

- (ii) An Leq,15 min value of 45 dB(A) at any other time. The noise at such time shall not contain a tonal component.

At no time shall the noise generated on site result in an increase in noise level of more than 10 dB(A) above background levels at the boundary of the site.

- b) All sound measurement shall be carried out in accordance with ISO Recommendation 1996:2007: Acoustics - Description and Measurement of Environmental Noise.

Reason: To protect the residential amenities of property in the vicinity of the site

6. Within three months of the date of this order, a monitoring programme for emissions from the site, including noise, dust and light shall be submitted to, and agreed in writing with, the planning authority. The programme shall commence within 6 months of the date of this order and shall provide for the submission of monitoring reports to the planning authority at least once every three months. In the event that adequate monitoring reports are not submitted or the reports indicate that the limits on emissions required under

this permission have been exceeded, the planning authority may order that activity on the site cease until adequate mitigation measures have been agreed with the planning authority and implemented, and the occupier of the site shall comply with any such order.

Reason: To protect the amenities of the area and of property in the vicinity of the site

7. Within 6 months of the date of this order a berm shall be erected along the southern and eastern boundary of the site which shall be at least 3m high, measured from the ground level within the site. The berm shall be landscaped and planted in accordance with a planting scheme that shall be submitted and agreed with the planning authority within 3 months of the date of this order. The agreed scheme shall include details of all other planting and boundary treatments on the site. The storage or stacking of loose or bagged coal or pallets, or of any other materials or equipment, on the site shall not exceed a height of 2.4m above ground level on the site.

Reason: To protect the visual character of the area

8. Within three months of the date of this order visibility splays shall be provided at the entrance to the site from the public road of 70m in each direction, measured from a point 2.4m from the rear of the carriageway at a height of 1.05m, to the satisfaction of the planning authority. In the event that the required visibility splays have not been provided by the required date to the satisfaction of the planning authority, the authority may order that activity on the site cease pending the provision of the visibility splays, and the occupier of the site shall comply with such an order.

Reason: In the interests of traffic safety

9. A BS750 round threaded outlet fire hydrant on a 100mm diameter watermain shall be located within 50m of the proposed development along the verge of the surfaced roadway.

Reason: To obviate fire hazards

10. Water supply and drainage arrangements, including the attenuation and disposal of surface water, shall comply with the requirements of the

planning authority for such works and services. In particular all surface and contaminated waters shall be diverted via silt traps and a petrol interceptor prior to discharge to watercourses. No surface water may discharge onto the public road and the development shall take steps to ensure that no water discharges from the public road onto the site. A detailed scheme demonstrating compliance with this condition shall be submitted and agreed with the planning authority within three months of the date of this order.

Reason: In the interest of public health

11. The developer shall pay to the planning authority a financial contribution in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid within three months of the date of this order or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. Details of the application of the terms of the Scheme shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine the proper application of the terms of the Scheme.

Reason: It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission

Stephen J. O'Sullivan
Planning Inspector

15th August 2017