



An
Bord
Pleanála

Inspector's Report 05E.249057.

Development	Infilling of 26,500 cubic metres of soil and stone to cover and raise site levels of 2.27 hectares of agricultural lands.
Location	Ballymacool, Letterkenny, Co. Donegal.
Planning Authority	Donegal County Council.
Planning Authority Reg. Ref.	17/50343.
Applicant(s)	Moyle Plant Limited.
Type of Application	Permission.
Planning Authority Decision	Grant.
Type of Appeal	First Party
Appellant(s)	Moyle Plant Limited.
Observer(s)	None
Date of Site Inspection	02 nd of November 2017.
Inspector	Karen Hamilton.

1.0 Site Location and Description

1.1. The subject site is a large field (c. 5ha) located to the west of Letterkenny town, accessed from the Regional Road (R-250), Co Donegal. The site is bound to the north by the road and south by the River Swilly and consists of a range of dense overgrown scrub along the north of the site and wetland along the south. There is an existing open space buffer between the site and the R- 250 which includes a 1.2m high timber fence and hedging.

2.0 Proposed Development

2.1. The proposed development includes the infill of lands and is summarised as follows:

- Infill of lands (2.72ha) with 26,500 cubic metres of uncontaminated soil and stone to cover and use as agricultural lands,
- Retain 0.53ha of lands as a settlement area,
- Remaining southern and western boundary of the lands comprising the existing drainage channels a 5m wide buffer strip and embankments,
- Temporary access road.

3.0 Planning Authority Decision

3.1. Decision

Decision to grant permission with 13 conditions of which the following are of note:

C 2: a) Only topsoil and stone shall be imported to and deposited in the application site and no waste whatsoever, particularly construction and demolition waste, shall be disposed of over the contours of the importation of fill materials on the site. The filled are shall be levelled, top soiled and seeded with grass upon completion of development.

b) Biosecurity measures shall be put in place to ensure that no non-native invasive species are imported into the site.

C 3: Prior to the transportation of material the applicant shall confirm the origin/ location of all the materials, agree the proposed haulage routes, duration of infilling

works, proposal for management of the site and public traffic and include wheel wash facilities.

C 4: Prior to commencement of development visibility splays of 160m and set back 2.4m shall be provided.

C 5: A safe dwell area for delivery vehicles shall be provided fully off the carriageway.

C 6: Full frontage or roadside drain shall be piped with concrete pipes of adequate size agreed with the area engineer.

C 7: Site preparation works to be in accordance with IPI Requirements for the *Protection of Fisheries Habitat during Construction and Development Works at River Sites*.

C 8: All mitigation measures in Section 6.1 of the NIS shall be implemented in full, site preparation works shall adhere to best practice and post construction surface water run off shall be treated via serviced sediment and oil interceptor traps prior to discharge to Lough Swilly.

C 9: a) Any damage to the public road network serving the site shall be repaired and reinstated to the satisfaction of the Roads Authority for the area.

b) The Roads authority is to receive photographic and video evidence of the state of the roads on each haulage route.

C 12- Submission of a security bound for €100,000 for the repair and reinstatement of the relevant section of the public road network surveyed in accordance with condition no 9.a.

C 12- Submission of €40, 800 as a Section 48 development contribution.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The report of the area planner reflects the decision to grant permission following the submission of further information on the detailed operation of the site as a waste facility including the origin of the material, deliveries and haulage routes and

screening of infill. In addition, a phasing plan for the infill of lands was requested. The planner also refers to the following:

- The requirement for a waste permit,
- The policies of the development plan in relation to flooding and the need for additional information in the flood risk assessment to indicate the proposed development would not give rise to an inevitable negative impact downstream.

3.2.2. Other Technical Reports

Roads Design- Recommendation that no infill is allowed as it had not been demonstrated how the surrounding areas will be impacted upon by the loss of an attenuation area.

Roads Department- Refusal recommended as the reduction in the capacity of the flood plain will have a negative impact downstream in Letterkenny. The impact on the road network is questioned.

3.3. **Prescribed Bodies**

None received.

3.4. **Third Party Observations**

None received.

4.0 **Planning History**

No relevant planning history on the site.

5.0 **Policy Context**

5.1. Development Contributions Guidelines for Planning Authorities, 2013

5.2. The Planning System and Flood Risk Management, OPW 2009.

5.3. Donegal Development Contribution Scheme 2016-2021.

5.4. Donegal Development Plan 201

The site is zoned as open space in the Letterkenny Development Plan 2009-2015 (as extended).

Policy NE4: River Swilly and Environs

The Council seek to improve the quality of the River Swilly environment as a wildlife corridor and to provide for improved pedestrian/cycle access to the river.

The site is located along a floodplain of the River Swilly and an area of the lands along the southeast are identified as subject to coastal flooding (Indicative 0.5% AEP (200-yr) and lands directly adjacent to the River Swilly as fluvial – extreme.

Objectives F-O-1

To assess all development proposals in accordance with The Planning System and Flood Risk Management Guidelines for Planning Authorities, November 2009, DoEHLG.

Objectives F-O-2

To adopt a sequential approach to flood risk management when assessing the location for new development based on avoidance, reduction and mitigation of flood risk.

Policy F-P-10

It is a policy of the Council to secure and promote in appropriate circumstances the natural role of flood plains as a form of flood attenuation. Agricultural areas and vacant open spaces within floodplains may be considered appropriate for development as formal amenity/recreational areas and public parks, as they also serve as natural flood catchment areas.

5.5. Natural Heritage Designations

The site is located along the River Swilly which flows into the Lough Swilly SAC 3.7km downstream.

6.0 The Appeal

6.1. Grounds of Appeal

The grounds of appeal are submitted from the applicant in relation to two conditions and is summarised below:

- The site is zoned as open space in the development plan and abuts the R250-3 and is 1.5km west of the Town Centre Boundary.
- The site will provide a facility for disposal of uncontaminated fill from the County town of Letterkenny and environs over the next 5 years which will equate to 50 truck load deliveries per week.
- Condition No 12 refers to €100,000 Security Bond as adequate security for the repair and reinstatement of the relevant section of the public road surveyed in accordance to Condition No 9.a.
- Condition No 9.a requires the submission of a traffic management plan for all proposed transportation of material.
- Based on the proposed lifespan, low frequency of vehicles, location of the site, relatively short distance for the haulage of material, the good condition of the public road and condition No 9.a, it is considered the amount of the security bond is unreasonable.
- Condition No 13 includes a development levy for €40,800 in respect of public infrastructure. The levy was calculated at a rate of €1, 500 per 0.1ha for “the use of lands for quarrying/mining or for the deposit of refuse or waste.
- Two other planning decisions (17/50244 and 17/50404) for comparable development applied no infrastructural levies. Therefore, the development charge has been unfairly applied.

6.2. Planning Authority Response

The response from the planning authority refers to the report of the area planner and Section 48 (10) (a) of the planning act which states that no appeal shall lie to the

Board in relation to a contribution being required under a Development Contribution Scheme as it has been applied correctly.

6.3. **Observations**

None received.

7.0 **Assessment**

7.1. The first party has appealed Condition no.12 and no.13 which relate to the inclusion of a development contribution and a security bond for works to the adjoining regional road. Having regard to the facts, namely, that there were previously similar works permitted in principle in this location, there were no third party observations, and the submission of a Flood Risk Assessment which was referred to the OPW by the Planning Authority, I am satisfied that the consideration of the proposed development 'de novo' by An Bord Pleanála would not be warranted in this case. Accordingly, I recommend the Board should use its discretionary powers under Section 139 of the Planning and Development Act 2000 (as amended), and issue the Planning Authority directions to retain, remove or amend the Condition no.12 and no. 13.

7.2. Therefore, the main issues of the appeal can be dealt with under the following headings:

- Application of Development Contribution Scheme
- Inclusion of Security Bond
- Appropriate Assessment

Application of Development Contribution Scheme

7.3. Use: The proposed development is for the infill of lands (2.7ha) with 26,500m³ of soil and stone to raise the levels of the site. The site is zoned as open space in the Letterkenny Development Plan 2009-2015 (as extended). The lands are not currently in use and the information in the application refers to a previous use for rough grazing and between 2005-2008 the site was used as for infill (9,00m³) from a site in Letterkenny (waste permit).

- 7.4. In response to a further information request, details were submitted of a similar facility operated by the applicant (linked to the building industry) in Falcarragh (waste permit no WFP-DL-15-042-01) and confirmation that the subject site would be managed by a nominated manager. Therefore, having regard to the nature of the works which facilitate and is linked to the construction industry and the location of the lands within the Letterkenny development plan area, I do not consider the nature of the use on the lands is agricultural and I consider the proposed development appropriately described as commercial.
- 7.5. Condition 13 requires the developer to pay €40,800 to Donegal County Council as a development contribution in accordance with the Donegal Development Contribution Scheme 2016-2021. The applicant is seeking the removal of this condition. The planning authority applied a rate of €1,500 per ha for the “*use of lands for quarrying/mining or for the deposit of refuse or waste*” and the grounds of appeal refer to the planners report which considered the proposal was of a similar nature. The grounds of appeal also provide examples of two planning permissions for similar developments (17/50244 and 17/50404), which did not include a development contribution condition, which I do not consider are relevant to the application site as they relate solely to lands currently used as agricultural.
- 7.6. Reduction: Section 3.3 of the Donegal Development Contribution Scheme 2016-2021, Exemptions and Reductions, includes three tables for uses which may be considered for a reduction in contributions. The proposed infilling of lands is not specifically included within any of the categories although Table 4: DSC General Reductions No 10, 11 & 12 allows for a percentage reduction in contribution for developments with a restricted permission period (commercial windfarms, quarrying, mining operations are not eligible for reductions). No 11 includes a 50% reduction in the normal rate for permissions restricted to a 5-year permission. A further information response from the applicant states that the approximate lifespan of the facility will be 5 years.
- 7.7. As detailed above, it is considered the nature of the works are commercial in nature and as such the imposition of a development levy at a rate of €1,500 per ha (“*land for deposit of refuse or waste*”) is appropriate. I note the application refers to the use of the site for 5 years, therefore I consider the reduction in Table 4 for a restricted 5-year permission is applicable.

7.8. In summary, having regard to the use on the site and the period for which the proposed development is for, I consider the application of a levy €750 per hectare (total €20,400), appropriate.

Inclusion of a security bond

7.9. The subject site is accessed from the R-250. The road network in the vicinity of the site is in good condition, in particular the main R 250 to the north of the site has been subject to significant investment with high quality surfacing, footpaths and edge of road treatment. The report of the Roads Department refers to 3,000 fully laden lorries required to transport 26,500m³ of fill and the impact on the existing roads network.

7.10. Condition No 12 requires a security bond in the sum of €100,000 for the repair and reinstatement of the relevant section of the public road surveyed in accordance with condition no 9 (a) which states *“any damage to the public road network serving the site shall be repaired and reinstated to the satisfaction of the Roads Authority for the area”*. Condition No 9. (b) requires the submission of a full photographic survey of the road used for the haulage route. The applicant argues that the security bond is unreasonable considering the lifespan of the proposal, the location adjacent to Letterkenny, the present good condition of the public roads network and the requirements of condition No.9.

7.11. The applicant is required to survey the road network and repair any damage caused, in the first instance (condition No.9). The bond referred to in Condition No 12 is retained by the Council as security where the applicant fails to comply with Condition No 9. On completion of the works, after the 5-year period, and subject to compliance with Condition No 9 the applicant is returned the bond.

7.12. Having regard to the condition of the road network, the nature of the works and the amount of haulage to the site, I consider the inclusion of a security bond of €100,000 reasonable to provide the Council with adequate security for the repair and reinstatement of the road network surveyed in accordance with Condition No 9.

Appropriate Assessment

7.13. The subject site is located along the River Swilly which flows into the Lough Swilly SAC 3.7km downstream. A Natura Impact Statement (NIS) submitted includes an assessment of the impact of the proposed development within an area of influence

as both Lough Swilly SPA (site code 004075) and Lough Swilly SAC (site code 002287). The NIS refers to a potential threat of the run off from the proposed development on the Estuaries (1130) and the Spartina swards (1320) at the mouth of the Swilly. Table 6.1 of the NIS includes a list of mitigation measures such as settlement pond, inclusion of land drains, 5m buffer and 2m planting strip which I consider reasonable to prevent a significant negative impact on the qualifying interests of the Lough Swilly SAC and Lough Swilly SPA. Condition 8.a requires the implementation of all mitigation measures listed in Table 6.1.

7.14. Therefore, having regard to the nature and scale of the proposed development, the conservation objectives of and distance from the European sites, it is reasonable to conclude that on the basis of the information on the file and condition no 8, which I consider adequate, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on either the Lough Swilly SAC and Lough Swilly SPA, or any other European site, in view of the site's Conservation Objectives

8.0 Recommendation

Having regard to the nature of the condition the subject of the appeal and based on the reasons and considerations set out below, the Board is satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted and directs the said Council under subsection (1) of section 139 of the Planning and Development Act, 2000 as amended, to AMEND condition number 13 and RETAIN condition number 12.

9.0 Reasons and Considerations

Having regard to:

- (a) the provisions of the Donegal Development Contribution Scheme 2016-2021,
- (b) the nature and scale of the development proposed, and
- (c) the current high standard of the existing road network,

the Board considered that No. 11 of Table 4: General Reductions, and a 50% reduction applied, concluding that a total contribution of €20,400 was required in respect to the provision of public infrastructure and facilities.

The Board also concludes that the terms and conditions of condition number 12, inclusion of a security bond for €100,000 in respect of repair or improvements for the road network, should remain.

Karen Hamilton
Planning Inspector

17th of November 2017