



An
Bord
Pleanála

Inspector's Report ABP-300829-18

Development	Alterations to previously granted permission (PL16/50115), landscaping and adjustment of boundary to accord with Land Registry Map.
Location	“Hair o’ the Dog” Bar, Quay Street, Moville, Co. Donegal.
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	Reg. Ref. 16/51217
Applicant(s)	Wendy Tweed
Type of Application	Appeal
Planning Authority Decision	Grant permission
Type of Appeal	Third Party
Appellant(s)	Foyle/Moville Rowing Club
Observer(s)	Daniel Mc Ginley
Date of Site Inspection	16 th June 2018
Inspector	Karla Mc Bride.

1.0 Site Location and Description

- 1.1. The appeal site is located in the coastal village of Moville on the NE section of the Inishowen Peninsula in County Donegal and it overlooks the Foyle Estuary. The site is located at the junction of Quay Street and Foyle Street at Moville Pier. It is bound to the N by a public park at Bath Green, to the S by a slipway, to the E by a seawall with the foreshore beyond, and to the W by the public road. The site comprises a detached 2-storey house that was formerly used as a public house (Hair O' the Dog) and the surrounding garden areas. The area to the front of the building, which has an undefined and open frontage, is traversed by an existing pathway which extends from Bath Green to Moville Pier to the S of the site.
- 1.2. Photographs and maps in Appendix 1 describe this site in more detail.

2.0 Proposed Development

- 2.1. Planning permission is being sought to carry out alterations to a previously granted permission for the change of use of a public house to a family dwelling house (Reg. Ref. 16/50115).
- 2.2. The proposed development would comprise alterations to a previously granted planning permission (Reg. Ref. 16/50115) for the change of use from the Hair 'O The Dog public house to dwelling house. The proposed works would comprise a stated adjustment to the site boundary to accord with the Land Registry Map:
 - External landscaping works comprising the enclosure of the front garden.
 - Install post & wire fencing between 2 kerbs set 1.2m with hedging in-between, maintained at a height of 1.2m along the E & S site boundaries.
 - Install a 1.2m high timber fence and 1.2m high & c.3m wide vehicular entrance along the SW site boundary.
 - Relocation of the pathway to along the E and S site boundaries.

3.0 **Planning Authority Decision**

3.1. **Decision**

The planning authority decided to grant planning permission subject to 1 condition which required strict compliance with the plans, particulars and details submitted with the application on 18th August 2016.

3.2. **Planning Authority Reports**

3.2.1. **Planning Reports**

The report of the planning officer recommended that planning permission be granted.

3.2.2. **Other Technical Reports**

Roads Section: has no objection to the proposed development, it confirmed that the Council has no public interest in the lands and welcomed the preservation of the pathway from Bath Green to Merville Pier.

Marine Section: no objection to the proposed development which does not interfere with or restrict access to the pier, harbour or its operation.

3.3. **Prescribed Bodies**

No submissions received.

3.4. **Third Party Observations**

Several submissions received by the County Council from the following:

- Foyle/Merville Rowing Club
- Merville Boat Club
- Merville Regatta Committee
- Merville Piers Committees,
- Merville Raft Race Committee
- Inishowen Maritime Museum (JCE Bovaird)

Their collective concerns relate to: - obstruction of access to public lands; loss of a car parking and viewing area associated with the marine events and regattas; reduction in the width of a right of way; inappropriate development on the Foreshore.

4.0 Planning History

Reg. Ref. 16/50115: Planning permission granted for a change of use from public house to a 3-bedroom dwelling house including internal alterations, demolition and replacement of WC accommodation to the site and rear with an attached domestic garage, alteration and partial demolition of entrance porches, window alterations and external landscaping. The house would be c.316sq.m. and the garage would be c.37.5sq.m. Permission granted subject to 4 standard conditions.

The following details are of note:

- The SW site boundary was annotated as “undefined” on the Site Layout Plan.
- The Agent’s cover letter stated that along the shore/S boundary, the existing right of way is to be maintained and the edge of the garden area landscaped...and that the W end of this boundary is not defined.
- The Department of Agriculture Food & the Marine stated that it appears that site does not encroach on the State Foreshore, however if it transpires that the works do in fact encroach, then no works should be undertaken unless the appropriate foreshore consent has been obtained.

5.0 Post-decision correspondence

5.1. Post-decision submission from Observers

One submission received by the County Council from Michael D White & Co. Solicitors on behalf of the following, as representatives of Merville Pier Committee:

- Dr. Don McGinley
- Seamus Boviard
- Councillor Martin Farren
- Paddy McElroy

- Kim Banks
- Paddy Boyce

Their collective concerns relate to:

- Unauthorised development comprising the erection of an illegal fence to block public use of an established right of way (166 years) at or near Moville Pier.
- Kerbing has been constructed on the grounds near the pier, a wall has been built and development works have taken place to provide a lawn and landscaping over part of the public right of way.
- Works have taken place on ground near to lands which the Council reclaimed from the foreshore in the mid-1970s for the purpose of constructing a slipway.
- The Council has an obligation to protect the well-established right of way at or near Moville Pier which forms part of Sli na Slainte, together with the right of the public to park in the open space to the front of the building.
- Once a public right of way and a public right to park in the open space has been established, the owner has no legal right to extinguish these rights by enclosing an open space, or the legal entitlement to divert a public right of way into another narrow area which raised health and safety concerns.
- PA was requested to confirm how it intends to deal with the following:
 - Unauthorised development.
 - Protecting the public right of way & public parking.
- Note the contents of the Planning Officer's report but reject the hypothesis:
 - The applicant is entitled, in planning terms, to propose to enclose the open area to the fore of the site (within her registered ownership) within the attendant grounds of the parent dwelling house.
 - Acknowledge the historical right of passage from Bath Green to the harbour across the open frontage and that some form of rights may possibly be established as a result of historical usage, however the

applicant proposes to continue a right of way by means of a footpath, which is acceptable in planning terms.

- The only other remaining material change, is the private land will no longer be available to the public as a parking or viewing area, and the private rights of the applicant are primary, particularly as there is no evidential legal position supporting a public proposition to the contrary.
- The public have historically used the open spaces to walk from Bath Green to the pier and to park their vehicles.
- The contention that there are no registered burdens on the folio does not mean that rights of way and other easements do not exist.
- There is a long-established right of way over the entirety of the open spaces and not just the small narrow pathway which would be conceded to the public.
- The public are entitled to park their vehicles as a viewing point on the entirety of the open spaces, once an easement has been used by the public for more than 12 years it is an established right regardless of whether or not same is registered as a burden on the owner's title.

5.2. Planning Authority response submission

- The PA determined the application on the basis of planning considerations and the development was considered to be satisfactory.
- The planning system is not designed as a mechanism for resolving disputed rights over land which is a matter for the Courts.
- Even if there is doubt, permission can still be granted as a person must be certain in civil law that they have the right to execute the development as per the Development Management Guidelines (2007) & S.34(13) of the P&D Act.

6.0 Policy Context

6.1. Development Plan

The site is located within an area covered by the County Donegal Development Plan 2018 to 2024 and the following objectives are of relevance:

- Moville is located within the settlement boundary for a Tier 3 Town.
- Public amenity area (Bath Green) to N of site
- Several protected Views E from the site and environs across Lough Foyle.

6.2. Natural Heritage Designations

None in the vicinity of the site.

7.0 The Appeal

7.1. Grounds of Appeal

General concerns:

- PA did not properly consider all of the public objections & request that these be considered by the Board.
- Works have commenced, are unauthorised & enforcement action required.
- Contrary to the proper planning and sustainable development of the area.
- Site mainly comprises reclaimed foreshore which is owned by public bodies & cannot be held in private ownership (photographs & maps included).
- Inaccuracies in the planning application render it invalid.
- Close off and prevent access to an open space historically used by the public.
- Loss of car parking, manoeuvring space & storage, public safety issues & creation of marine hazards.

Site & location:

- Previously known as the “Hair o’ the Dog” and “The Anchor” public house at the wharf and stone piers area of Moville.
- Located along the harbour and adjacent to the Foyle/Moville Rowing Club.
- Historic open frontage, used for parking associated with the pier & harbour and as a viewing area during water based events.
- Area used for public access & recreation for c.3 centuries.
- Permission recently granted to convert the pub to a house & works underway.

Lack of consultation & foreshore area:

- Proposal will eliminate open space used by the public & tourists.
- Application should have been circulated to Prescribed Bodies (An Taisce, relevant marine agencies, HSE, OPW, the Loughs Agency & NPWS).
- A condition should have required a 10/11m wide public path with no fencing.
- Requested DCC to consult with their legal agents in relation to ownership (historic photographs attached).
- Car park was constructed by the OPW for DCC on reclaimed foreshore lands, the area is in public ownership and does not form part of Folio DL84821F.

Development Plan policies:

- Current Plan includes a brief settlement plan for Moville and the Moville Town Plan (1994) contains more details for the area and should be considered.
- The Town Plan designated the harbour for general development with no reference to houses & prohibits development that would affect the harbour.
- The Moville Area Strategy Plan (1994) also identified the need for water based tourism/commercial activity at the harbour/pier.
- Policy TOU-0-8 recognises the importance of walking/cycle routes and to conserve public rights of way which access the seashore & proposal will materially contravene this Policy.

Proposed and undertaken development:

- Works are not exempted development, they include both proposed and completed works & constitute obstruction of a public area & right of way.
- Refer to Article 9(1) (x) of the P&D Regs and Article 6 (Classes under Schedule 2, Part 1) in relation to the fencing or enclosure of any land habitually open to or used by the public during the preceding 10 years.
- A Foreshore Licence application was required.

Inaccurate description & address:

- Application relates to works already constructed such as kerbing & fencing.
- Permission should have been sought for retention & completion.
- Plastic piping is visible but its function is unknown.
- The use of a “c/o” address is not permitted & has been used by DCC to invalidate applications in the recent past.

Marine & public safety:

- DCC has commenced a marine safety review of c.100 piers & harbours.
- Relevant marine agencies should have been consulted in relation to the loss of open space used by boats, trailers, vehicles & marine rescue services.
- Loss of this space will give rise to congestion & endanger public safety.
- The diversion of the right of way towards the edge of the slipway and the adjacent high drop would give rise to health & safety concerns.
- Previous wide path will be narrowed & limited by a 6 foot drop on one side.
- Maintenance & erosion concerns and loss of space to carry out boat repairs.
- The access gate does not show sightlines.

Sewage disposal:

- No onsite disposal system indicated or site assessment submitted.
- Cannot connect to the public system as none exists & new WWTS is required.

Natura 2000 sites:

- Several nearby (Lough Foyle SPA & Magilligan Strand SAC) and AA required.

Legal interest:

- Query the accuracy of the conveyancing details.
- Applicant acknowledges the presence of a right of way but seeks to divert it to a more dangerous location.
- Long term use of the building for commercial use & the site as a car park.

7.2. Applicant's Response**General:**

- The previous application (16/50115) involved a change of use from public house and 2 apartment units to a single dwelling house.
- The previous owners of the privately owned building encouraged public access to the building and lands for commercial reasons.
- The pub & one of the units have been vacant for 10 years & the licence has been sold, there were no objections to the original change of use application and the works have now been completed.
- This application relates to changes to the boundary treatment to the front as the previous application was made prior to completion of the sale, when the site was not registered and the boundaries to the front were not defined
- Historically there is a public right of passage across the front of the property.
- The applicants wish to preserve this access whilst also protecting their privacy by defining the pathway over the property and keeping the public away from the ground floor windows, which serve family bedrooms.

Response to concerns raised:

- Only a limited number of the issues raised by the Appellant are relevant and there are several inaccuracies in their submission:
- There were no objections to the previous application.

- No unauthorised works; the site was fenced off during the construction works & a pathway was maintained outside the fence & a 150mm high kerb was installed; & the Council's Enforcement Section has no concerns.
- Unfair to request the Board to consider objections other than those made by the Third Party appellant.
- The reclaimed foreshore areas lie outside the site boundary.
- The area to the front of the house has always been in private ownership although the previous commercial uses encouraged public access.
- The public right of passage has been maintained over the private lands & the works will not give rise to safety concerns.
- The change of use & related works were permitted and are now complete.
- None of the land owned by the applicant is foreshore.
- The suggested 10/11m wide public path is without precedent and would serve the turning needs of heavy vehicles rather than pedestrians.
- The scale of the public pathway that was retained during the works and currently proposed is similar to the existing shore walkways.
- Queries about ownership are not relevant.
- The containers which house the rowing club are located on public land.
- The plastic piping etc. relates to permitted drainage works for the house.
- Applicant's address was provided in the space provided in the form.
- Site does not provide space for users of the pier as it is privately owned.
- The publicly owned lands are occupied by temporary containers but have the potential to accommodate public use of the pier should the harbour authorities concur that congestion in the area is an issue.
- Improved sightlines as a result of the relocation of the boundary wall.
- The change of use from to a family home has reduced the loading on the public WWTS and it would be unaffected by the current application.
- No adjacent designated natural sites & the works would not justify an AA.

- The submitted map has no legal standing, and concerns in relation to legal interest should be addressed by the relevant authorities.
- Not interested in any further widening of the pathway.

7.3. **Planning Authority Response**

- This response raised no new issues.

7.4. **Observations**

One letter of observation received from Daniel Mc Ginley whose concerns are summarised below:

Safety issues:

- Proposal will block off the car park which has also acted as a viewing platform for many decades
- Merville Pier is used by anglers, for water based & rowing events and by commercial heavy vehicles.
- Since the security fencing was erected cars park elsewhere along the pier & sometimes blocks the rowing club, and the turning area has been lost.
- The car park also acts as viewing platform for the coastguard.
- The diverted right of way would not be safe, especially for the elderly.

Local amenity/open access:

- Disappointed with extinguishment of a long established public right of way.
- Merville Pier, Bath Green & Merville Shore Path are premier & interrelated amenities which have been enjoyed since the mid 1800s (photo attached).
- Previous easements have been extinguished (from Bayfield to the Pier).
- The Sli na Slainte pathway between Merville & Greencastle is covered by Policy BNH 6 which seeks to protect the integrity of the shoreline.

Heritage:

- Query the absence of a heritage assessment.
- Regard should have been had to the historic importance of the town as a departure point for emigration ships and the quality of the built heritage.

7.5. Further Responses

The following submissions were received following a High Court Judgement (217-633 JR) to quash the previous decision of the Board.

First Party response:

- No new issues other than to provide more clarity in relation to the nature of the existing and proposed pathway.
- The original right of way over the site was defined by a set of concrete steps adjacent to a steep rock face and a narrower strip of gravel dressing, from the base of the steps along the edge of the applicant's property; the steps & gravel strip were installed & maintained by DCC over many years.
- The proposal will retain and increase the dimension of this maintained strip to provide a 2m wide pathway in addition to an existing grass verge at the edge of the pier wall, this defined pathway would be consistent with the treatment of the public right of way that exists along the entire shore front between Greencastle & Merville (c.3-4km), although this section will be slightly wider.

Third Party response:

- No new issues and request the Board to have regard to previous concerns.

Observer response:

- A public right of way is shown on Deed of Conveyance from August 1934.
- The accompanying map identifies a pathway between the property and Lough Foyle which dates from August 1855.
- The pathway runs parallel between the premises & the Lough and does not veer in any direction as proposed, and this indenture is similar to later ones in January 1893, August 1934 and April 1998.

- All subsequent owners have respected this pathway which has been used by the public for many decades along with the car park & garden area.
- Maps, photographs and heritage documents attached & a heritage assessment should have been carried out.
- No other new issues.

First Party response to Observer:

- The 1934 Conveyance is not a deed by a Fee Farm Grant.
- The applicant has never disputed the existence of the right of way which allows for free transfer from Bath Green to Merville Pier.
- The right of way would not be affected by the development and it has been excluded from the application, despite the lack of clarity in relation to status.
- The Board has no jurisdiction in relation to legal interest disputes.
- A heritage assessment is not required as the premises and nearby buildings are not Protected Structures, amenity value of Merville Pier would not be affected & no danger to pedestrians and tourists.
- No other new issues.

Planning Authority response to Observer:

- Submission noted and no new issues raised.

8.0 Assessment

The main issues arising in this case relate to:

- Principle of development
- Validity of application
- Design, layout & amenity
- Ownership, legal interest & land use
- Public right of way
- Car parking & traffic safety
- Other issues

8.1. Principle of development

The proposal would be located within the settlement boundary for the Tier 3 Town of Moville which is covered by the Donegal Development Plan 2018 to 2024 and the proposed works would be acceptable in principle.

8.2. Validity of application

The proposed development would comprise alterations to a previously granted planning permission (Reg. Ref. 16/50115) for the change of use from the Hair 'o the Dog public house to a dwelling house to take account of boundary adjustments. The works would comprise the construction of a 1.2m high boundary with gated entrance around the front garden of the existing house along with a relocated pathway from within the site to along the E and SE site boundaries.

It is noted that the proposed boundary works lie within Class 5, Part 1 (Exempted Development) of Schedule 2 of the Planning & Development Regulations, 2001, as amended, which allow for the construction of a boundary fence to the front of a house provided that the height does not exceed 1.2m.

However, this exemption may not apply as the works could fall under some of the Restrictions on exemption listed in Article 9 (1) (a) of the Regulations, including: - the

fencing or enclosure of land habitually open to or used by the public during the 10 years preceding such fencing or enclosure for recreational purposes or as a means of access to any seashore or recreational utility under subsection (x); the obstruction of any public right of way under subsection (xi); and the formation of a vehicular entrance to a public road, the surfaced carriageway of which exceeds 4m in width (notwithstanding the current use of the lands as a car park with undefined boundaries).

8.3. **Design, layout & amenity**

Planning permission was previously granted under Reg. Ref. 16/50115 to change the use of the vacant Hair O' The Dog public house to a 3-bedroom dwelling house. The SE site boundary was undefined on the planning application drawing, pending confirmation of its exact location. The applicant is now seeking permission to carry out alterations to this permission which would comprise an adjustment of the site boundary to accord with the Land Registry Map, landscaping works to include the enclosure of the front garden and the relocation to the E of an existing path that traverses the site from Bath Green to Merville Pier.

The enclosed private garden area would provide for an acceptable level of residential amenity to serve the occupants of the existing house, and the proposed works would not have an adverse impact on the residential amenities of other houses in the vicinity.

The proposed boundary works would comprise the installation of a post and wire fence between 2 kerbs approximately 1.2m apart with hedging in-between which would be maintained at a height of 1.2m along the E and S site boundaries, and a 1.2m high timber fence and gated entrance along the SW site boundary. The proposed works would define the front garden area and the proposed design, layout and use of materials would not detract from the visual amenities of the area.

The existing pathway that traverses the site from Bath Gren to Merville Pier would be relocated to run parallel to the E and S site boundaries. It would comprise a c.2m wide gravel path and grass verge which would be acceptable in terms of visual amenity. The other issues related to this pathway are assessed in the following sections of this report.

8.4. Ownership and legal interest:

The site comprises a 2-storey dwelling house with front, rear and side gardens. The rear and side gardens are defined by timber fencing whilst the front garden is currently defined by a temporary wire fence and kerbing. The applicant is seeking planning permission to erect a permanent fence around the front garden area.

The Third Party and Observer have raised concerns in relation to the size, scale, extent and ownership of the lands to the fore of the building which have been historically unenclosed.

The size and configuration of the lands have changed over time as a result of historic foreshore reclamation works and the construction of a seawall to the E, and the more recent construction of a slipway to the S. This can be confirmed by reference to historic OSi maps and more recent aerial imagery of the site which cover the period from 1837 to 2013.

The site was originally occupied by a 2-storey building which was used as a hotel and departure point for ships leaving for Scotland, England, Canada and the USA, and then as the Hair 'o the Dog pubic house until it became vacant around 10 years ago. According to the submissions on the appeal file, the site was used as a car park since then.

The County Council granted planning permission under Reg. Ref. 16/50115 for a change from public house to residential use along with internal alterations and side extensions, and these works are now complete. At the time the planning application was lodged and decided on by DCC, the exact location of the S site boundary with the adjoining slipway was undefined. The applicant states that confirmation has

since been received and that the site extends fully to the S boundary with the jetty and to the E boundary with the seawall.

It is noted that the case file does not contain any documentary evidence to support this ownership claim by way of Land Registry Folio or similar details, although both the development description and the planning officer's report refer to a Land Registry Map. Notwithstanding this omission, the Development Management Guidelines (2007) state that the planning system is not designed as a mechanism for resolving disputes about title to land or premises or rights over land as these are ultimately matters for resolution in the Courts. It is noted that section 34(13) of the Planning and Development Act, as amended states that a person is not entitled solely by reason of a permission to carry out any development. However, in the event that documentary evidence is required, the Board has the discretion to request this by way of a further information request.

8.5. Established land use and public right of way:

The Third Party and Observer have raised concerns in relation to use of the lands which they submit comprise a long established and unenclosed public amenity space and car parking area associated with the use of Merville Pier, and the existence of a public right of way across the site from Bath Green to Merville Pier and the foreshore.

Established land use:

In relation to the use of the lands to the fore of the building, it is noted that this area has remained open with undefined boundaries for a prolonged period of time, and that the lands have had various uses over the decades. The unenclosed nature of the lands can be confirmed by reference to OSi aerial imagery of the site which covers the period from 1995 to c.2013. According to the various submissions on the appeal file the use of the lands has been associated with the use of the building as a hotel, passenger terminal and public house, a public amenity area and as a car park.

The lands have been intermittently used as a public amenity space associated with water based recreational activities along the Foyle Estuary. More specifically, the area has been used during the summer months as a starting point for boat races, for

spectators and for parking vehicles with boat trailers. Several photographs submitted by the Appellant and Observers confirm this range of public amenity uses. More recently and since the closure of the Hair o' the Dog public house, the lands have been used as a car park, according to the submissions on the appeal file.

The County Council granted planning permission under Reg. Ref.16/50115 in March 2016 to change the use of the vacant Hair o' the Dog public house to a 3-bedroom dwelling house. The site within the red line boundary comprised the existing building and the surrounding areas of open space to the rear, side and front. As previously stated, the S site boundary was undefined pending confirmation of its exact location.

The front garden area that would be enclosed under the current proposal comprises the area to the fore of the building which was located within the red line boundary under Reg. Ref.16/50115, a small area to the S that extends to the boundary with the slipway and a small area to the SE that extends to the boundary with the seawall. Under Reg. Ref.16/50115 the open areas surrounding the house formed part of the private amenity space for the permitted house.

In terms of the planning use of the site, it is quite clear that the use has varied over time but that the main use of the lands has been connected to the dominant use of the existing building as a hotel, departure terminal and a public house. Planning permission was recently granted to change the vacant public house building to residential use and the area to the front of the building mainly lies within the red line boundary of this residential planning permission. I am therefore satisfied that the current planning use of the site is residential, although it is acknowledged that the lands have been habitually open to public access for a prolonged period of time.

The continued but intermittent seasonal use of the lands as a public amenity space during water related recreational events at Merville Pier is noted, as is the stated more recent use of the lands as a car park. However, I am satisfied that this intermittent, seasonal and more recent car park use would not be sufficient to

change the planning use of the lands to something separate from the main use of the building, particularly having regard to the recent planning decision to change the use of the public house to a dwelling house. Any outstanding legal interest issues are assessed in section 8.3 above.

Public right of way:

An existing pathway runs along the E shore of Lough Foyle from Greencastle to the N to Moville Pier to the S of the appeal site, it traverses the site and none of the parties to this appeal dispute its existence. An examination of historic OSi maps and more recent aerial imagery show a pathway through Bath Green to a point that is located to the immediate E of, and approximately halfway across the frontage of the existing building. The pathway is located inside the appeal site boundary from the top of the steps at Bath Green to the aforementioned point close to the frontage of the house and it is bound to the E by a stone wall. However, the remaining section of the pathway through the SE section of the site is undefined after this point.

The applicant proposes to relocate the S section of this pathway to a new position along the E site boundary with the seawall and the S site boundary with the slipway. The gravel path would be 2m wide and it would be separated from the seawall and jetty by a c. 5m wide and c.1m wide grass verge to the E and S respectively. The relocated pathway would be located outside the proposed boundary fence.

The Appellant and Observer have raised concerns in relation to the position of the southernmost section of the pathway relative to the appeal site lands. They submit that the proposed relocation of the pathway to along the S perimeter of the site boundary with the slipway is unacceptable and unsafe because of the narrow separation distance and sharp drop to the slipway. They state that the original pathway traversed the appeal site lands which were historically unfenced and open to public access until recently, when permission was granted to change the use of the public house to a private dwelling under Reg. Ref. 16/50115.

It is noted that although the pathway has been in existence for a substantial period of time it has not been identified as Public Right of Way in Map1 and Table 15 of Appendix 3 of the Donegal County Development Plan 2018 to 2024. It is also noted that the Observer has provided an historic map of the site which describes a pathway through the site, however the resolution of any dispute in relation the status of the pathway as a Public Right of Way is outside the jurisdiction of the Board.

The proposed relocation of the pathway to the E and SE section of the site is welcome in terms of ensuring continued public access from Bath Green to Moville Pier and wider public amenity. However, I would concur with the concerns raised in relation to the safety issues along the SE section of the pathway in close proximity to the jetty where there is sharp and undefined drop to the slipway. I am not satisfied that the combined c.3m width of the proposed pathway and grass verge would be adequate to ensure the safety of persons using this section of the path. The proposed boundary treatment and pathway should be set back an additional 1m to provide a 2m wide pathway and 2m wide grass verge in order to ensure public safety. This this concern could be addressed by way of a planning condition.

8.6. Car parking and traffic safety

The gated entrance and vehicular access arrangements to the paved car parking area in front of the house are considered acceptable in terms of traffic safety.

The concerns raised in relation to the recent use of the lands for car parking since the closure of the public house c.10 years ago, and traffic safety at Moville Pier are noted. However, I am satisfied that there is sufficient space on Moville Pier to accommodate the parking and manoeuvring of vehicles related to the fishing and recreational use of the pier. It is also noted that on street car parking spaces are available in the nearby town centre and along the approach roads to the pier.

I am therefore satisfied that the proposed development would not give rise to a traffic hazard or endanger the safety of other road users.

8.7. Other issues

Appropriate Assessment: The site is located a substantial distance from the nearest European site to the S along Lough Foyle, and having regard to the small scale of the proposed works and the absence of a direct connection between the works and the designated site, I am satisfied that Screening for Appropriate Assessment is not required.

Built heritage: The concerns raised by the Appellant and Observer are noted however the site and surrounding area are not covered by any sensitive built heritage designations.

Drainage: The concerns raised in relation to this issue are noted however they are outside the remit of this application as they relate to the works previously permitted under Reg. Ref. 16/50115.

9.0 Recommendation

Arising from my assessment of this appeal case I recommend that planning permission should be granted for the proposed development for the reasons and considerations set down below and subject to the following conditions.

10.0 Reasons and Considerations

Having regard to the provisions of the County Donegal Development Plan 2018 to 2024, and to the nature, and scale of the proposed development, it is considered that subject to compliance with the following conditions, the proposed development would not seriously injure the amenities of the area or of property in the vicinity or give rise to a traffic hazard. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

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 proposed fence and hedge shall be setback an additional 1m from the SE site boundary with the existing slipway so as provide for a 2m wide pathway and a 2m wide grass verge.

Reason: In the interest of clarity

3. The width of the proposed hedge shall be maintained on a regular basis so as to ensure that it does not encroach on the pathway to the east and south of the site in a way that would compromise public access to the pathway or the safety of persons using the pathway.

Reason: in the interest of the public safety and orderly development.

Karla Mc Bride
Planning Inspector

6th July 2018