



An  
Bord  
Pleanála

## Inspector's Report ABP-303778-19

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<b>Development</b>	Demolish shed, construct new building, storage area associated with existing retail outlet and new machine shop assoc. with existing boat yard, connect to existing on-site services.
<b>Location</b>	Shore Road, Killybegs, Co. Donegal.
<b>Planning Authority</b>	Donegal County Council
<b>Planning Authority Reg. Ref.</b>	1851817
<b>Applicant(s)</b>	Mooney Boats Ltd.
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant Permission
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Dept. of Agriculture, Food and the Marine
<b>Observer(s)</b>	None
<b>Date of Site Inspection</b>	8 <sup>th</sup> May 2019
<b>Inspector</b>	Una O'Neill

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## 1.0 Site Location and Description

- 1.1. The subject site is located at the southern section of the Fishery Harbour in Killybegs, Co. Donegal.
- 1.2. The site, which has a stated area of 0.294ha, comprises a boat building and engineering business operated by Mooney Boats Ltd. The business operates from a large industrial building, with a smaller shed/machine shop to the south of this. There is parking on site, as well as open storage areas. Adjoining the appeal site is a retail outlet/marine chandlery store also operated by Mooney Boats.

## 2.0 Proposed Development

- 2.1. The proposed development comprises the following:
  - Demolition of an existing storage shed with a stated floor area of 215.5sqm.
  - Construction of a new building subdivide into a storage area for the existing retail outlet and a new machine shop for the existing boat yard. The floor area of the new build is stated to be 785.7sqm.

## 3.0 Planning Authority Decision

### 3.1. Decision

Permission GRANTED, subject to 14 conditions, including the following:

C2: Archaeological monitoring

C3: Construction and Traffic Management Plan

C6: Advertising

C7: External lighting

C8: Signage

C14: Development contribution

### 3.2. **Planning Authority Reports**

#### 3.2.1. Planning Reports

The Planning Officer's report generally reflects the decision of the Planning Authority. The following is of note:

- Issues raised relating to the lease/license is a separate matter.
- Proposed development is consistent with the existing established use and acceptable in principle.
- Proposal is acceptable in terms of siting and design.
- Archaeological monitoring required.
- The subject site is located within flood Zone A. Having regard to the proposed use, existing levels within the subject site, adjoining existing harbour related activities, and classification of the site as 'less vulnerable development', no flood mitigation measures are necessary in this instance.

#### 3.2.2. Other Technical Reports

Roads: No objection.

Chief Fire Officer: No objection.

### 3.3. **Prescribed Bodies**

Department of Agriculture, Food and the Marine: Objection based on applicant not having full title, part of lands in the ownership of the department and no consent given to applicant to apply for permission.

### 3.4. **Third Party Observations**

None.

## 4.0 **Planning History**

**14/50507** – Retention Permission GRANTED for infilled tidal waters for extension of open yard of approx. 0.19ha; Permission GRANTED for construction of a new quay

wall/berthing facility with the property and adjacent tidal waters of Killybegs Harbour for the building and repair of tidal craft.

The following application relates to the adjoining site operated by Mooney Boats Ltd:

**07/21259** – Permission GRANTED for construction of a new two storey retail unit with car parking and connection to existing public sewer.

## 5.0 Policy and Context

### 5.1. County Donegal Development Plan 2018-2024

- Killybegs: Layer 2A Strategic Town.
- Killybegs is located in an area of High Scenic Amenity.
- **Objective MRCM-04:** To safeguard and enhance the role of Killybegs, Greencastle and Burtonport as centres of fleet activity, seafood processing and ancillary services.

### 5.2. Seven Strategic Towns Local Area Plan, 2018-2024 (operative from 19<sup>th</sup> August 2018): Section 10 of the Local Area Plan relates to Killybegs and the following sections of the plan are of note:

- **Zoning objective:** Established Economic Development, the objective of which is 'to protect and enhance the capacity and operation of areas of Established Economic Activity'.
- Appeal site adjoins zoning for 'Port/Harbour Related Activities'.
- **Strategic Vision:** To strengthen the Strategic Importance of Killybegs as: a Fishing Port of National Importance, as a sub-regional service town, and as a regional coastal tourism gateway and to develop the town as an Innovation Hub for Marine Resources including Food, Tourism and Ocean Energy.
- **Section 10.5.3:** Economic Development Objectives.
- **Objective KB-ED-1:** To safeguard and enhance the role of Killybegs as a centre of fleet activity, processing and ancillary services and to facilitate diversification into new areas of appropriate investment and employment

opportunities, including marine related economic activity, tourism, information technology, telecommunications, pharma and bio-technology, transit and logistics, energy related technologies and research and development.

- **Policy KB-ED-1:** It is a policy of the Council to consider proposals for appropriate new commercial developments, including industrial uses, (or proposals for extensions to or redevelopment of existing commercial/industrial uses) on lands zoned 'Economic Development' on the accompanying land-use zoning map (see Map 7), subject to compliance with all relevant policies of this Local Area Plan...
- **Policy KB-ED-3:** It is a policy of the Council to promote and facilitate the further development and expansion of Killybegs Harbour Centre as a strategically important deep water commercial and leisure port, subject to environmental considerations and compliance with all relevant policies of this LAP. Any proposals that are considered to have a potential impact on the hydrology of the area, particularly in terms of the adjacent St. Catherine's Well, shall be accompanied by a hydrology report prepared by a competent authority.
- **Policy KB-EH-1:** It is the policy of the Council to conserve and protect Zones of Archaeological Potential located within Killybegs, as identified in the Record of Monuments and Places.
- The site is located within the 'Rough Point' archaeological complex which covers an area in excess of 40.24 acres.

### 5.3. Natural Heritage Designations

The closest European site is Saint John's Point, SAC (Site Code 000191) and pNHA, located approx. 4km southeast of the development site, on the opposite side of the bay (McSwynes Bay).

### 5.4. EIA Screening

Having regard to the nature and scale of the proposed development, the nature of the receiving environment and proximity to the nearest sensitive location, there is no

real likelihood of significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

The grounds of appeal, as submitted by the Department of Agriculture, Food and the Marine, are summarised as follows:

- Killybegs Fishery Harbour Centre is one of six designated Fishery Harbour Centres which are owned, managed and maintained by the Department of Agriculture, Food and the Marine.
- The site is partly on property owned by the Minister for Agriculture, Food and the Marine. The applicant has not title or rights to this property and the applicant does not have the Minister's consent to any development of this state owned land.
- The area outlined in blue and identified as 'overall landholding' on the submitted maps does not represent the property that the applicant has title to as the applicant's drawing encompasses foreshore lands on Folio DL36728F, which is registered to the Minister. Although the applicant purported to take a lease of those lands in 1998, the party granting the lease (Bord Iascaigh Mhara) did not have title to all of, or the right to grant leases over certain portions of, that area in blue.
- The area to which Bord Iascaigh Mhara (BIM) had title, and to which the applicant now has title via a leasehold interest, is set out by the Property Registration Authority on Folio DL24350F, and is significantly smaller than that of the 'overall landholding' claimed by the applicant (being the area incorrectly outlined in blue in the 1998 lease). The applicant does not have any legal title to any land outside of that registered on Folio DL24350F.

- The department has taken legal advice and has been advised that the 1998 'lease map' is incorrect. This has been accepted by the applicant and his legal advisors in correspondence with the department.
- Bord lascaigh Mhaire (BIM) acknowledge that the 1998 lease map is incorrect, as confirmed by letter dated 19<sup>th</sup> February 2019, which confirms BIM has no authority to consent to the development of any property outside their Folio DL24350F.
- A letter from BIM is included as an appendix to this submission which states on 16<sup>th</sup> July 2018 BIM, following legal advice, granted landlord approval for the planning application submitted by Mooney Boats Ltd. BIM are aware that a section of the proposed development extends beyond the area over which they can legally grant consent and are now not in a position to grant consent to the development as a whole. BIM consent now extends to the area reflected in their folio as set out by the Property Registration Authority on folio DL24350F and is now reflected on folio DL732L. The area outside these folios is registered to the Minister of Agriculture Food and the Marine and therefore his consent is required for this portion of the development.
- The Department was willing to grant the applicant a new lease to include areas not demised by the lease with BIM. The applicant's solicitors have accepted the applicant does to have legal title to land outside their folio DL732L. However the applicant has not accepted the lease offer to date.
- The applicant's folio DL732L is incorrect. The applicant does not have title to significant portions of the area outlined in blue including some of the area it is proposed to develop in this application. Part of the proposed development encroaches on Folio DL36728F which is registered in the name of the Minister for Marine and Natural Resources (predecessor of Minister for AFM). The encroachment occurs where the development continues to the west of the applicant's folio and encroaches on plan number 507 of Folio DL36728F and where the development continues to the east of the applicant's Folio DL732L, straying onto plan number 506 of Folio DL36728F.



- The applicant has undertaken unauthorised development on the foreshore to the northeast of the proposed development. The department intends to issue proceedings on this matter.
- Part of the area outlined in red is on foreshore. The management of the foreshore in the Killybegs Fishery Harbour is the responsibility of the Department for Agriculture, Food and the Marine under the Foreshore Act 1933 as amended. The applicant requires a foreshore consent in order to develop any foreshore. The incorrect 1988 lease map has the high water mark measured as HWM, which is inside the thick line indicating the boundary of the proposed leased grounds. The lands between the HWM and the outer boundary line is foreshore and is state owned. BIM did not have the legal right to grant a lease over the foreshore in 1988, which is why the property registration authority of Ireland only registered the lands contained in the applicant's folio DL732L to the applicant.
- The Department's consent was not sought as required under Article 22(2)(g) of the Planning and Development Regulations 2001, as amended, nor could any consent be given to the development under the present circumstances.
- It is noted that the applicant previously sought the departments permission for a development under reg reg 14/50507 for development on a separate part of the department's Folio 3728F, which was also included in the proposed lease.

## 6.2. Applicant Response

The applicant's response to the third party appeal is summarised as follows:

- The applicant's father, Michael Mooney, took occupation of the old Bord lascaigh Mhaire boat yard in 1984 when BIM closed all its boatyards throughout Ireland. A 999-year lease was negotiated for the yard in April 1988 and relates to land which BIM represented it had the legal right to allow the company operate within. This lease was entered into 10 years before the department's registration.
- Mooney Boats Ltd. has maintained and developed the boatyard, employing 71 people and also contractors, building vessels for the Irish and European markets.

- The Department for Agriculture, Food and the Marine has offered a second lease for 99 years to address issues of the foreshore. The proposal has not been accepted and at no stage has the applicant or their solicitors stated or accepted that they do not have title to the land.
- The applicant has obtained planning in the recent past (07/21259) on lands that the department now states the applicant does not have title to and no objection was made to that application.
- None of the objections are grounded on core 'planning' issues. The issue of title should be left to another forum, where, if required, it will be strenuously contested.
- The question of title has already been addressed in a response to Donegal County Council.
- A series of photographs are attached which trace the development of the yard and a map of the boatyard is included.
- The existing unauthorised development is being addressed and the applicant has agreed in writing to remove the unauthorised development. The applicant's engineers and engineers from Donegal County Council are in ongoing negotiations.
- The issue of foreshore consent is a title issue which is being dealt with by the applicant's solicitors. This issue has also been addressed in a response to Donegal County Council.
- There is no prejudice to the minister or the people of Ireland by granting this application as there is no potential for any other user or use and the only access is over the company's property.

### **6.3. Planning Authority Response**

The planning authority has responded as follows:

- The PA considered that the applicant had demonstrated sufficient legal interest to make the application based on (i) the information submitted, (ii) previous planning history, and (iii) unsolicited information from the agent received by the council on 23.01.19, which provided for consent from BIM to the making of the application and was accompanied by a folio map

considered to be consistent with the landholding and site boundaries delineated in the planning application. The application was subsequently assessed based on its merits, relevant objectives and policies of both the County and Killybegs Local Area plans, as well as matters pertaining to siting and design, flooding, traffic, archaeological, public health and technical considerations.

- Alleged matters relating to enforcement do not form part of the consideration of this application.
- The planning process is not the correct mechanism for determining issues in respect of disputes regarding lease holding and associated boundaries and in this regard the third party has other options to pursue same through the legal system. The granting of permission does not infer automatic consent to carry out development as per section 34(13) of the Planning and Development Act 2000 (as amended).

#### **6.4. Observations**

None.

#### **6.5. Further Responses**

None.

### **7.0 Assessment**

#### **Principle of Development**

- 7.1. The subject site is located within zoning objective 'Established Economic Development', the objective of which is 'to protect and enhance the capacity and operation of areas of Established Economic Activity'. The proposal is to demolish an existing shed and construct a larger warehouse unit for use as a machine shop associated with the boatyard and storage area associated with the retail outlet. The proposal is considered in keeping with the existing zoning objective 'established economic development', subject to assessment of all other planning related issues.
- 7.2. The primary issue for assessment relates to ownership and legal interest

### **Ownership and Legal Interest**

- 7.3. The primary objection to the proposal relates to the issue of title and consent to apply for planning permission.
- 7.4. The Department of Agriculture, Food and the Marine states the applicant does not have title to a portion of land within the red site line boundary and a portion of land within the blue site landholding boundary. The department has submitted property registration folios supporting their case and a letter from Bord Iascaigh Mharaigh stating they can no longer give consent to the applicant to apply for permission. The applicant disputes the issues raised around title and have submitted their leasehold map as issued by Bord Iascaigh Mharaigh in 1988.
- 7.5. 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. I am of the view that in accordance with the Planning and Development Regulations 2001, as amended, the applicant has demonstrated sufficient legal interest to make this application. 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.

### **Other Matters**

- 7.6. With regard to the siting and impact of the development, I am of the view that the given the pattern of development in the area and the zoning of the site, the proposed warehousing unit in terms of its design, scale, location and issue of flood risk, is appropriate for this site.

### **Appropriate Assessment**

- 7.7. The proposed development would not be located within an area covered by any European site designations and the works are not relevant to the maintenance of any such sites.
- 7.8. The closest European site is Saint John's Point, SAC (Site Code 000191) located approx. 4km southeast of the development site, on the opposite side of the bay (McSwynes Bay). The following are the qualifying interests related to this SAC:
- 1160 Large shallow inlets and bays

- 1170 Reefs
- 6210 Semi-natural dry grasslands and scrubland facies on calcareous substrates (Festuco-Brometalia) (\* important orchid sites)
- 6410 meadows on calcareous, peaty or clayey-silt-laden soils (Molinion caeruleae)
- 7230 Alkaline fens
- 8240 Limestone pavements
- 8330 Submerged or partially submerged sea caves

7.9. The main potential impact is deterioration of water quality due to discharges of polluting materials such as suspended solids and hydrocarbons during construction and operation. The applicant proposes connection to the existing stormwater drainage system on the site. Adherence to best practices methodologies during the construction phase would control the release of sediments and prevent pollution as a result of accidental spillages and leaks.

7.10. While there is potential for an aquatic connection between the site and the European site given the proximity of the building to the harbour edge, having regard to the nature and scale of the proposed works and the substantial c.4km separation distance to the nearest European site, it is unlikely that any sediments released during the construction phase would reach the European sites. The operational phase of the proposed development, subject to best practices, would have no adverse effects. There is no potential for cumulative impacts in-combination with other plans and projects in the surrounding area, having regard to the contained nature of the works.

7.10.1. It is reasonable to conclude that on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, individually or in combination with other plans or projects would not be likely to have a significant effect on European Site No. 000191, or any other European site, in view of the site's Conservation Objectives, and a Stage 2 Appropriate Assessment is not therefore required.

## 8.0 Recommendation

- 8.1. It is recommended that permission is granted for the reasons and consideration set out hereunder and subject to conditions.

## 9.0 Reasons and Considerations

- 9.1. Having regard to the provisions of the County Donegal Development Plan 2018-2024, the existing pattern of development in the area, and the nature and scale of the proposed development, it is considered that subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1.	<p>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.</p> <p><b>Reason:</b> In the interest of clarity.</p>
2.	<p>Details of the materials, colours and textures of all the external finishes to the proposed development shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.</p> <p><b>Reason:</b> In the interest of visual amenity.</p>
3.	<p>Water supply and drainage arrangements, including the disposal and attenuation of surface water, shall comply with the requirements of the planning authority for such works and services.</p>

	<b>Reason:</b> In the interest of public health.
4.	<p>Site development and building works shall be carried out only between the hours of 0700 to 1800 Mondays to Fridays inclusive, between 0800 to 1400 hours on Saturdays and not at all on Sundays and public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.</p> <p><b>Reason:</b> In order to safeguard the residential amenities of property in the vicinity.</p>
5.	<p>The site development works and construction works shall be carried out in such a manner as to ensure that the adjoining streets are kept clear of debris, soil and other material and if the need arises for cleaning works to be carried out on the adjoining public roads, the said cleaning works shall be carried out at the developer's expense.</p> <p><b>Reason:</b> To ensure that the adjoining roadways are kept in a clean and safe condition during construction works in the interest of orderly development.</p>
6.	<p>Notwithstanding the provisions of the Planning and Development Regulations 2001, or any statutory provision amending or replacing them, no advertisement signs (including any signs installed to be visible through the windows), advertisement structures, banners, canopies, flags, or other projecting elements shall be displayed or erected on the buildings or within the curtilage of the site, unless authorised by a further grant of planning permission.</p> <p><b>Reason:</b> To protect the visual amenities of the area.</p>
7.	<p>The developer shall facilitate the preservation, recording and protection of archaeological materials or features that may exist within the site. In this regard, the developer shall –</p> <p>(a) notify the planning authority in writing at least four weeks prior to the commencement of any site operation (including hydrological and</p>

	<p>geotechnical investigations) relating to the proposed development,</p> <p>(b) employ a suitably qualified archaeologist who shall monitor all site investigations and other excavation works, and</p> <p>(c) provide arrangements, acceptable to the planning authority, for the recording and for the removal of any archaeological material which the authority considers appropriate to remove.</p> <p>In default of agreement on any of these requirements, the matter shall be referred to An Bord Pleanála for determination.</p> <p>Reason: In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.</p>
8.	<p>The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including:</p> <p>(a) location of the site and materials compound including areas identified for the storage of construction refuse;</p> <p>(b) location of areas for construction site offices and staff facilities;</p> <p>(c) details of site security fencing and hoardings;</p> <p>(d) details of on-site car parking facilities for site workers during the course of construction;</p> <p>(e) details of the timing and routing of construction traffic to and from the construction site and associated directional signage, to include proposals to facilitate the delivery of abnormal loads to the site;</p> <p>(f) measures to obviate queuing of construction traffic on the adjoining road network;</p> <p>(g) Measures to prevent the spillage or deposit of clay, rubble or other debris on the public road network;</p>



	<p>(h) alternative arrangements to be put in place for pedestrians and vehicles in the case of the closure of any public road or footpath during the course of site development works;</p> <p>(i) details of appropriate mitigation measures for noise, dust and vibration and monitoring of such levels;</p> <p>(j) containment of all construction-related fuel and oil within specially constructed bunds to ensure that fuel spillages are fully contained. Such bunds shall be roofed to exclude rainwater;</p> <p>(k) off-site disposal of construction/demolition waste and details of how it is proposed to manage excavated soil; and</p> <p>(l) means to ensure that surface water run-off is controlled such that no silt or other pollutants enter local surface water sewers or drains.</p> <p>A record of daily checks that the works are being undertaken in accordance with the Construction Management Plan shall be available for inspection by the planning authority.</p> <p><b>Reason:</b> In the interests of amenities, public health and safety</p>
9.	<p>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 prior to commencement of development 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.</p> <p><b>Reason:</b> It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the</p>

	Development Contribution Scheme made under section 48 of the Act be applied to the permission.
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Una O'Neill  
Senior Planning Inspector

29<sup>th</sup> May 2019