



An
Bord
Pleanála

Inspector's Report ABP 304315-19

Development	Construction of a graveyard and alterations to the existing car park.
Location	Drumore Td, Letterbarra, Donegal Town. Co Donegal.
Planning Authority	Donegal Co. Council.
Planning Authority Reg. Ref.	18/51379.
Applicant(s)	Fr Francis Ferry.
Type of Application	Permission.
Planning Authority Decision	To Grant Permission.
Type of Appeal	Third Party
Appellant(s)	Irene Meehan.
Observer(s)	None.
Date of Site Inspection	June 19 th , 2019.
Inspector	Breda Gannon.

1.0 Site Location and Description

- 1.1. The site is located in Letterbarra, Co Donegal. It lies partially within the grounds of the Church of the Redeemer, which also accommodates the former parochial house and a large carparking area. The site, which has a stated area of 0.6ha is located immediately east of the now vacant house and extends into an adjoining field in separate ownership. A row of trees defines the boundary. The area within the church grounds consists of a footpath and green area and the adjoining area is part of a larger agricultural field.
- 1.2. The area is rural in character with isolated rural houses and small groups of dwellings. The existing cemetery is located on elevated ground on the opposite side of the local road.

2.0 Proposed Development

- 2.1. The proposal is to construct a new graveyard, boundary wall, entrance gates, access roadway and all associated site development and drainage works to include alterations to car park. The graveyard would comprise 96 no. plots enclosed by low boundary walls. A new access road (3.8m wide) would be constructed on the west side of the graveyard with gated access to the south and west.
- 2.2. The development would be located on lands which are partially owned by the church with the remainder owned by a third party, who has consented to the making of the application.
- 2.3. Further information was sought on the application on 26th October, 2018 requesting that a report prepared by a suitably qualified person be submitted which,
 - a) identifies the location of spring wells and watercourses to which it is proposed to discharge ground and surface waters, and which considers the public health risks associated with the proposed development, and
 - b) considers the hydrological link between the development and the spawning beds of the Eanymore Water Fishery and the risk of significant effects arising from the storm water drainage proposals. It was also requested that proposals for the

disposal of all excavated materials from the site, the source of proposed filling materials and haul routes be identified.

- 2.4. The response of March 6th, 2019, which included a hydrological and environmental assessment of the proposed development was to the satisfaction of the planning authority.

3.0 Planning Authority Decision

3.1. Decision

The planning authority decided to grant permission for the development subject to 4 no. conditions.

Condition No 1 – Requires that the site shall not be used as a graveyard until land drainage works to reduce the level of the water table to a level 2.5m below the new compacted ground level of the site. It requires that a site suitability assessment be submitted to the planning authority which demonstrates that the water table has been lowered to allow use as graveyard. It specifies that the development can only proceed following written confirmation that it is satisfied with the information submitted.

Condition No 2 – Requires that land drainage works be carried out when all trees from the site have been cleared. It requires that a distance of 2m be maintained between drains and coffins.

Condition No 3 – Requires that site preparation and construction shall adhere to best practice and conform to the Inland Fisheries Ireland '*Requirements for the Protection of Fisheries Habitat during Construction and Development Works at River Sites*', and that all construction be carried out between May and September inclusive.

Condition No 4 – Requires that construction be managed in accordance with a Construction Management Plan, to details to be submitted to and agreed in writing with the planning authority prior to commencement of the development.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The planning officer's report of March 25th, 2019 notes that the site is located in an Area of Moderate Scenic Amenity, which has the capacity to absorb additional development that is suitably located, sited and designed. The site is within the curtilage of the existing RC church and accordingly the principle of the development is acceptable. The existing graveyard is located on the opposite side of the road and is at capacity. As the graveyard is a complimentary use to the existing church, it is not considered that there is a requirement for additional car parking.

A Hydrological and Environmental Assessment report was submitted in response to a request for further information. It is stated that the Eanymore River is not a designated Natura 2000 site and accordingly it is not necessary to screen for a Natura Impact Statement. The planning authority will ensure that all site preparation and construction works associated with the proposed development adheres to best practice.

3.2.2. Other Technical Reports

The **HSE** report of 20/3/19 raised no objection to the proposal, subject to appropriate conditions.

The **Road Design** report of 9/10/18 stated that they had no comment on the subject application.

The **Roads & Transportation** report of 20/9/18 noted that visibility at the existing entrance is poor. Recommended that the applicant be conditioned to carry out amendments in order to improve visibility, drainage and access width.

4.0 Submission

A submission was received from Irene Meehan who raised issues regarding the suitability of the soil/subsoil and the unacceptable risk to surface/ground water posed by the location of a graveyard in this location. This was a matter that required further investigation. It was noted that there was no analysis of surface or groundwater pathways and springs in the area were not identified. The applicant indicated that

surface water would discharge to the existing watercourse, which flows within 700m to salmon spawning beds of the Eanymore water fishery, posing a contamination risk.

5.0 **Planning History**

No details of any relevant planning history have been forwarded by the planning authority.

6.0 **Policy and Context**

6.1. **Development Plan**

The operative development plan is the **County Donegal Development Plan 2018-2024**. The plan does not contain any specific policies/objectives relating to graveyards.

6.2. **EIA Screening**

Having regard to the nature and scale of the proposed development and the nature of the receiving environment, there is no real likelihood of significant effects on the environment arising from the proposed development. The need for EIA can, therefore, be excluded at preliminary examination and a screening determination is not required.

7.0 **The Appeal**

7.1. **Grounds of Appeal**

The grounds of appeal are summarised below:

- The planning authority erred in law in its determination that the further information did not contain significant additional data including information in relation to the effects on the environment which would require re-advertising

under Article 31 of the Planning and Development Regulations. Consequently, the public were denied the opportunity for full participation in the process.

- The planning authority erred in law in accepting as adequate and considering part of a submission by the applicant in response to the further information request. It is clear that the information contained in the 'Hydrological and Environmental Assessment' is substantially incorrect or substantial information has been omitted. It was not, therefore, possible for the planning authority to properly assess and consider the potential risk of pollution to the receiving environment.
- The planning authority erred in law in accepting as adequate and considering part of a submission by the applicant in response to the further information request, of the cover letter from applicant's agent which purports to verify the particulars requested in relation to Item No 2 of the further information request. It is clear that the information submitted is substantially incorrect or substantial information has been omitted. Consequently, it was not possible for the planning authority to properly assess and consider the proper planning and sustainable of the area.
- The final point in the conclusions of the Hydrological and Environmental Assessment states that with implementation of measures (though the assessment has been shown to be flawed) contained in the report that the proposed development 'will not have a significant negative impact on the Eanymore River'. This conclusion is ambiguous.

7.2. Applicant Response

- The appellant considers the planning authority erred in law in the processing of the application. Whilst it is considered that these allegations are unjustified, this is a matter for the planning authority.
- The real planning matter at issue is that the existing graveyard is at capacity.
- The appellant made a submission in relation to the application and her rights of appeal were not diminished in any way by the process adopted by the planning authority.

- With regard to the analysis of existing soil, trial holes were dug on the site to expose the ground conditions to a depth adequate to accept 3 stacked coffins and to a depth required by the environmental health officer. Two environmental health officers were present when the trial holes were excavated and to assess soil conditions present.
- The recommendations of the EHO were taken on board prior to the preparation of the planning application. Drainage works to reduce the level of the water table to a minimum of 2.5m below the new compacted ground level are to be undertaken as part of the development of the graveyard and prior to its use. These works have been clearly set out in the conditions attached to the planning decision.
- It is considered that the appellant has overestimated construction traffic movements. It is considered that 300 lorry movements is an overestimate. In any case the car park for the existing church opens onto the adjoining road and there are new houses being constructed in the area without any disintegration of the public road. The local area roads engineers will have considered this matter and conditioned the permission appropriately.
- The planning authority have attached 4 no. conditions to the planning decision, which primarily deal with the preparation of the ground so as to conform with the suitability standards for graveyard. The planning authority fully considered the proposed use of this area as a graveyard and were correct in the processing of the application and the issuing of a decision to grant permission.
- It is considered that the proposal is in accordance with the proper planning and sustainable development of the area.

7.3. Planning Authority Response

- The response to further information was prepared by a suitably qualified person and was deemed satisfactory in addressing the further information request. It was received as information supplementary to and in support of the

information submitted at application stage. It was not considered that there were any new material issues arising that would require intervention under Article 35 of the Planning and Development Regulations.

- The cover letter submitted by the agent in support of the application included details of pre-planning consultation with the EHO for the area. This consultation was to ascertain the viability of the proposed development having regard to the underlying ground conditions and scope of proposed works.
- There is no scope to extend the existing graveyard.
- The site is c 1.55km to the south of the Meenaguse/Ardbane Bog SAC (Site Code 000172). This area is afforded protection due to the presence of blanket bog. Given the topography of the landscape that shows a general fall in elevation from the SAC southwards towards the application site, the source-pathway-receptor for potential contamination of waterways is not applicable in this instance. The Eanymore River is not a designated Natura 2000 site.

8.0 Assessment

- 8.1. I accept that the proposal to provide a new graveyard in this location is acceptable in principle. As noted by the planning officer its location within the church grounds would complement the use of the church and provide a necessary facility for the local community. It would replace the existing graveyard in the area, which is reaching capacity. The proposal would avail of the existing access and parking arrangements associated with the existing church and it is not considered that it would generate any significant additional impacts on the road network in the area.
- 8.2. My concerns regarding the proposal relates to the overall suitability of the site to accommodate a burial ground. As there are no Irish best practice guidelines on cemetery developments, guidance published by the Northern Ireland Environment Agency¹ (NIEA) and the Scottish Environment Agency² (SEPA) were consulted (copies attached). Both stress the risk posed by burial grounds to groundwater and the importance of adequate site investigation and risk assessment. Guidance is

¹ Cemeteries, Burials and the Water Environment-Practice Guide Version 1.1 April 2016. NIEA

² Guidance on Assessing the Impacts of cemeteries on Groundwater. Land Use Planning SEPA Guidance Note. Version 4 (2017)

provided on recommended separation distances to groundwater sources, surface water features and field drains. Both recommend that site investigation should occur to a depth of at least 1m below the planned base of the burial pits and there should be at least 1m of subsoil below the base of the burial pit to protect groundwater. If bedrock or standing water are encountered the area should not be used for burials.

- 8.3. I have concerns regarding the level of site investigation and the lack of a proper risk assessment carried out in respect of the proposed development. The proposal is to provide 96 no. burial plots, each capable of accommodating 3 no. stacked coffins. According to the HSE a grave of 8-10ft (2.4-3m) should be sufficient. Adopting the guidance provided and maintaining at least 1m of subsoil below the lowest coffin would require a grave depth of between 3.4 to 4m. This would necessitate intrusive site investigations down to this level.
- 8.4. While trials holes were excavated, there is no information on location, depth, water levels or the nature and type of soils present and their percolating properties. The Hydrological and Environmental Assessment provides no information on existing hydrogeological conditions, including underlying geology, depth to bedrock, aquifer type/vulnerability, soil type, soil depth and permeability. In the absence of comprehensive site-specific information on groundwater levels, soil depth and soil permeability, it is not possible to provide any assessment of the suitability of the site or the risk posed by the proposed development to groundwater.
- 8.5. The HSE clearly accept that the site is unsuitable as it currently exists and that intervention would be required to lower the water table and introduce soils with suitable percolating properties. The site improvement works proposed would involve a significant level of physical intervention on the site. It would involve the importation of significant volumes of soil (c 2376 m³ assuming depth of 4m) to fill the site. Achieving soil with suitable percolating properties is a highly specialised and skilled operation and there are logistics involved in terms of the achievement of suitable T-values, suitable compaction, supervised installation etc. There are, therefore, questions regarding the efficacy of the measures proposed and no guarantee that they would be successful.
- 8.6. With regard to potential impacts on surface water, the hydrological assessment notes the proximity of the Eanymore River (c 700m to the south) which is a

productive salmonid fishery and also contains populations of Freshwater Pearl Mussel. It is noted that surface water from the site will be directed to a stream/drain which leads directly to the river. The area immediately to the north and east of the graveyard has poor drainage, evidenced by the preponderance of reed vegetation. Ponding was also noted to occur to the east of the site following heavy rain. Perimeter drainage is recommended in the hydrological report to prevent surface water from entering the site from adjacent areas.

- 8.7. It has not been established that ground conditions are suitable for a graveyard and this is reflected in Condition No1 of the planning authority's decision which leaves matters to be determined post consent. Based on the information submitted in support of the application and the appeal, and the lack of a comprehensive assessment of the suitability of the site, it is not possible to conclude with any degree of certainty that the measures proposed will result in a site which is suitable for a graveyard or that the measures propose will allow pollutants to be effectively attenuated. Having regard to the high water table on adjoining lands and the potential for ponding of surface water on the site, there remains a tangible risk to surface water and potential impacts on the Eanymore River and on its protected species.
- 8.8. **Other matters:** The other matters raised by the appellant relate to procedural issues regarding the manner in which the application was processed by the planning authority. Whilst I consider that the further information submitted contained significant additional data which warranted re-advertising under Article 35 of the Planning and Development Regulations 2001, as amended, these are matters entirely for the planning authority and the Board has no role in this regard. The application is assessed 'de novo' and as if it had been made to the Board in the first instance.

9.0 **Appropriate Assessment**

- 9.1. The closest Natura 2000 site is Meenaguse/Ardbane Bog SAC (Site Code 000172) located to the north of the site, which is designated for Blanket Bog (Active). The site drains in the opposite direction towards the Eanymore River, that discharges into Inver Bay, which is not part of a Natura 2000 site.

9.2. Having regard to the separation distance from the Natura 2000 site and the absence of a pathway for potential impacts, I consider that the proposed development either alone, or, in combination with other plans or projects, would not be likely to have significant effects on a European site, in view of the sites' conservation objectives and that, therefore, a Stage 2 Appropriate Assessment and the submission of a Natura Impact Statement is not required.

10.0 Conclusion

10.1. Having regard to the lack of comprehensive site-specific information on local hydrogeological conditions, in particular on existing groundwater levels, soil depth and soil permeability, and notwithstanding the site improvement works proposed, it is not possible to comprehensively assess the adequacy of the proposal and to conclude that the proposed development would not pose a risk to groundwater and surface water.

11.0 Recommendation

11.1. Having considered the contents of the planning application, the decision of the planning authority, the provisions of the development plan, the grounds of appeal and the responses thereto, my inspection of the site and my assessment of the planning issues, I recommend that permission be refused for the development for the reasons and considerations set out below.

12.0 Reasons and Considerations

Having regard to ground conditions prevailing on the site, the high water table and poor percolating properties of the site and the extent of site improvement works required, the Board is not satisfied on the basis of the information submitted in connection with the application and the appeal, that the site can be satisfactorily drained and would not pose a risk to groundwater and surface water in the area. The proposed development would, therefore, be prejudicial to public health and contrary to the proper planning and sustainable development of the area.

Breda Gannon
Senior Planning Inspector

July 22nd, 2019