



An
Bord
Pleanála

Inspector's Report

ABP-304815-19

Development	2 no. diesel fuel dispensing pumps for use solely by Coyle Fuels vehicles at existing fuel depot.
Location	Bauville, Keeloges and Clonglash, Buncrana, Co. Donegal.
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	19/50574
Applicant(s)	John Coyle
Type of Application	Retention permission
Planning Authority Decision	Refuse retention permission
Type of Appeal	First Party
Appellant(s)	John Coyle
Observer(s)	None
Date of Site Inspection	21 st October 2019
Inspector	Donal Donnelly

1.0 Site Location and Description

- 1.1. The appeal site is located in the townland of Bauville, Keeloges and Clongash on the Inishown Peninsula, Co. Donegal approximately 2.5km east of Buncrana town centre. The site fronts onto a local road that rises away from the town to the level of the site at approximately 110m OD. The road is aligned with ribbon development from the town, more so on its south-western side. The appeal site is on the north-eastern side of the road. There is a dwelling directly opposite and an adjoining dwelling to the west.
- 1.2. The appeal site forms part of a larger site in use as a fuel depot mainly for the purposes of coal distribution. The area of the entire site is 1.63 hectares and the appeal site area is given as 0.04 hectare. The site includes the main entrance and hardstanding up to 2 no. diesel dispensing pumps enclosed with wooden fencing and with access gate. Opposite the pumps is a small display area for solid fuels and gas cannisters.

2.0 Proposed Development

- 2.1. Planning permission is sought for development described as the retention of 2 no. diesel fuel dispensing pumps for use solely by Coyle Fuels vehicles at the established fuel depot.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Donegal County Council issued notification of decision to refuse retention permission for three reasons. The first reason refers to Condition 3 of the parent permission (PL05E.248403), which required the omission of the pumps in the interests of traffic safety and residential amenity.
- 3.1.2. Under the second reason, it is considered that the current retail use of the pumps is not compatible with the specific surrounding land uses and is contrary to Development Plan Policy ED-P-14.

3.1.3. The third reason states that the applicant has failed to demonstrate adequate visibility splays in accordance with the relevant Development Plan standards and therefore the proposal would be contrary to Policy T-P-15.

3.2. Planning Authority Reports

3.2.1. The recommendation to refuse retention permission and reasons therefor set out in the Planner's Report broadly reflect the decision of the Planning Authority. The main points raised in the assessment of the proposal are summarised as follows:

- Policy ED-P-14 – proposal not compatible with non-retail nature of business; extra visitors to site may impact on residential amenities; and existing access inadequate.
- Principle of retention of pumps dispensing diesel and home heating oil to the public is established as unacceptable under Condition 3 or PL05E.248403.
- Omission of pumps is a requirement to render the development compliant with Reg. Ref: 16/51749.
- Pumps are publicly accessible and staff are readily available to receive payment – no measures such as lock on pumps or otherwise are in place to control use of pumps by the public.
- Pumps dispense agricultural diesel – not evident that business vehicles should need agricultural fuel.
- Core requirement of only serving Coyle Fuel vehicles would be impossible to enforce.
- Reg. Ref: 19/50575 is deemed to provide for filling of Coyle Fuel's own vehicles in a more appropriate, enforceable and satisfactory manner.
- Layout of pumps is comparable to that of a retail filling station – more suitable to retail sales than ancillary main operations on site.

3.2.2. The Executive Engineer (Roads) has concerns regarding the adequacy of the site entrance, drainage and overall impacts on the public road within 500m of the site.

3.3. Third Party Observations

- 3.3.1. Two third party observations were received on the planning application from residents of Aghilly, Buncrana and from the executors of the estate of the residential property abutting the site.
- 3.3.2. The main grounds for objection are that the sale of fuel to the public becomes unenforceable if the pumps are to remain. The observers state that they have witnessed the continued sale of fuel from the pumps to members of the public. It is considered that the applicant tries to downplay the scale of the development and its associated impact on local residents, landscape, environment and infrastructure.

4.0 Planning History

Donegal County Council Reg. Ref: 16/51749 (PL05E.248403)

- 4.1. Permission granted in September 2017 for retention of relocation and extension to coal storage sheds, change of use to coal bagging, and associated works.

- 4.2. Condition 3 attached to the Board's decision states as follows:

The diesel and home heating oil pumps shall be omitted from the development. Written confirmation that private fuel sales to motorists from within the subject site have ceased shall be submitted to the Planning Authority within three months of the date of this order.

Reason: *In the interests of traffic safety and residential amenity.*

- 4.3. Condition 9 requires the provision of 70m visibility splays at the entrance to the site.

Donegal County Council Reg. Ref: 05/70314

- 4.4. Permission granted for retention and completion of commercial fuel depot. It was a condition of this permission that *"the diesel pump shall be omitted from the development and no private fuel sales to motorists shall be carried out within the subject site."*

- 4.5. A number of other applications/ retention applications were granted for the expansion of the facility under Reg. Refs: 07/71243, 10/70181, 13/50308, 14/50841 15/51584 and 18/51676.

Donegal County Council Reg. Ref: 19/50606

- 4.6. Notification of decision to refuse permission issued for an amendment of Condition 2 of Reg. Refs: 05/70314 & 16/51749 (PL05E.248403) in order to allow for vehicle/ truck/ HGV access and egress by depot staff to the depot between 06:00 hours and 20:00 hours Monday to Friday and between 06:00 hours and 16:00 hours on Saturday.
- 4.7. This decision has also been appealed to the Board.

Donegal County Council Reg. Ref: 19/50575

- 4.8. Retention permission granted for 2 no. diesel fuel dispensing pumps complete with over ground fuel storage tank. This permission relates to the “adblue” diesel pumps to the side of the office building.

Donegal County Council Reg. Ref: 19/50576

- 4.9. Retention permission refused for 1 no. kerosene fuel dispensing pump or use solely by Coyle Fuels. The reasons for refusal are the same as Reg. Ref 19/50574. This application related to the home heating oil pump to the western side of the office building.

Donegal County Council Reg. Ref: 19/51052

- 4.10. Retention permission refused for an increase in height of storage/ stacking height of loose or bagged coal or pallets within the site from 2.4m to 4.8m above ground level.
- 4.11. It was considered that the development does not comply with Policy ED-P-14 in terms of protection of residential amenity, scenic amenity and overbearance, dust emissions, height of development, and screening.

Donegal County Council Reg. Ref: 19/50214

- 4.12. Permission refused for erection of a surplus bagged coal storage area to include new boundary wall and all associated site development works.

Donegal County Council Reg. Ref: 19/51284

- 4.13. Retention permission sought for an agricultural concrete yard and change of use of the yard for storage of bagged coal (further information sought).

5.0 Policy Context

5.1. Donegal County Development Plan, 2018-2024

- 5.1.1. The appeal site is outside the most recent Buncrana development plan boundary in a rural “*area under strong urban influence.*”
- 5.1.2. Policy ED-P-10 provides for the expansion or re-development of an existing economic development in the countryside provided the scale and nature of the resultant development will contribute positively to the long-term sustainability of the existing enterprise, subject to compliance with all relevant provisions of Policy ED-P-14.
- 5.1.3. Policy ED-P-14 sets out a number of criteria that must be met for any proposal for economic development use.
- 5.1.4. Development and technical standards are set out in Appendix 3 including those relating to visibility splays.

5.2. Natural Heritage Designations

- 5.2.1. The Lough Swilly SAC is approximately 2.9km west of the appeal site.

5.3. EIA Screening

- 5.3.1. Having regard to the limited scale of the proposed development and location of the site 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

- 6.1.1. A first party appeal against the Council's decision was lodged on behalf of the applicant. The grounds of appeal and main points raised in this submission are summarised as follows:

- Established fuel coal depot has developed and grown over the years in keeping with the increasing demands of operating a successful commercial enterprise.
- Minor form of development proposed is considered ancillary to overall established depot.
- Diesel dispensing pumps will be restricted to use by Coyle Fuels only, i.e. no private or public sales to motorists. Own lorries will be filled in evenings and throughout the day to fulfil daily deliveries. Company vans and cars will also use the pumps.
- Reasons for refusal all refer to a form of development which is not the subject of the planning application – decision based on alleged current or notional retail sale of fuel from the pumps.
- Current application is seeking permission for a materially different form of development than that which was previously adjudicated on by the Board – current proposal is for use by Coyle Fuels only and will not lead to any traffic and amenity impacts.
- Council’s second reason for refusal incorrectly refers to the “current retail use of the pumps” – current proposal seeks to rule out any such form of retail use at the pumps in question. Proposal could not therefore contravene an earlier condition imposed by the Board.
- Visibility splays of 70m have been provided from depot entrance in compliance with Condition 9 of PL05E.248403.
- Planning Authority has not assessed this case on its merits – issue of future policing and regulation of the pumps should not have assumed the primary consideration in the assessment of this application.
- Practically all commercial fuel depots throughout the country have fuel dispensing pumps for the ongoing operation of depot vehicles.
- Pumps are guarded by a fenced locking system and signage would indicate that the pumps are not for general public use.

- Appears that Council has effectively sought to limit its statutory role in any future enforcement relating to the subject development by deciding to refuse permission for an acceptable form of development.
- Concurrent application granted by the Council for 2 no. diesel pumps (Reg. Ref: 19/50575) will serve newer trucks within the fleet that require adblue to be added to the diesel to meet emissions regulations. Older pumps are for older diesel vehicles within the fleet.

6.2. Planning Authority Response

6.2.1. The Planning Authority responded to the first party appeal with the following comments:

- Removal of pumps is a condition of PL05E.248403 under which it was determined that the development is unacceptable in terms of it constituting retail use within an industrial development and traffic safety concerns.
- Pumps the subject of the current proposal and those refused under Reg. Ref: 19/50576 are located to the front of the reception/ office building and are openly available to the public.
- Subject pumps were clearly being used by members of the public during a site inspection carried out on 17th July 2019 (photograph attached).
- Other items are available for retail sales in the vicinity of the pumps.
- Overarching decision was taken by the Planning Authority that the pumps the subject of Reg. Refs: 19/50574 and 19/50576 are available for retail public use and are actually being used as same.
- Pumps have not been omitted as required by condition and whilst private fuel sales had ceased for a time, they are currently ongoing.
- Planning Authority accepts that the business needs a facility for refuelling its own vehicles and for this reason and decision was taken to grant permission for the other pumps on site that are less accessible for visiting members of the public.

- Cumulatively, the three concurrent applications have been decided in a manner that respects conditions attached by the Board and permits adequate provision for the business to operate in terms of fuelling its own vehicles.

7.0 **Assessment**

7.1. I consider that the key issues in determining this appeal are as follows:

- Development principle;
- Compatibility with surrounding land uses;
- Access and traffic impact;
- Appropriate Assessment.

7.2. **Development Principle**

7.2.1. It is intended that the development to be retained will be ancillary to the operation of an established business located in a rural area. Under Development Plan Policy ED-P-10, the Council will “...*consider proposals for the expansion or re-development of an existing economic development in the countryside provided the scale and nature of the resultant development will contribute positively to the long-term sustainability of the existing enterprise, subject to compliance with all relevant provisions of Policy ED-P-14...*”.

7.2.2. Policy ED-P-14 sets out a number of criteria to be met for any proposal for economic development use. Under the second reason for refusal attached to the notification of decision, it is considered that the proposal for retention is contrary to policy criteria relating to compatibility with surrounding land uses, amenities of nearby residents and access arrangements.

7.2.3. In deciding whether or not the proposal is acceptable in principle, I consider that these criteria should be assessed in more detail hereunder.

7.3. **Compatibility with surrounding land uses**

7.3.1. The first reason for refusal attached to the notification of decision refers to Condition 3 of permission (PL05E.248403) granted by the Board in September 2017 for the

retention or relocation of an extension to coal storage sheds, change of use to coal bagging and associated works. Condition 3 stated that the diesel and home heating oil pumps shall be omitted from the development and written confirmation that private fuel sales to motorists from within the subject site have ceased shall be submitted to the Planning Authority within three months of the date of the order. The reason for this condition was in the interests of traffic safety and residential amenity. This condition reflected a condition of the parent permission (Reg. Ref: 05/70314) for the fuel depot granted by the Council in February 2006 which stated that *“the diesel pump shall be omitted from the development and no private fuel sales to motorists shall be carried out within the subject site.”*

- 7.3.2. I would be in agreement that the retail sale of private fuel at this site could be considered incompatible with surrounding established land uses through increased traffic and impacts on residential amenity. However, as noted in the first party appeal, the proposal seeks to regularise the use of the diesel pumps for the purposes of refuelling staff vehicles only. I would therefore be in agreement that this proposal should first of all be considered on its own merits.
- 7.3.3. The first party appellant is willing to accept the conditions attached to a concurrent planning application on site for the retention of another diesel fuel pump to the side of the office building granted under Reg. Ref: 19/50575. The applicant was required under this decision to erect signage on these pumps to clarify that they are for the use of Coyle Fuels only. Furthermore, signage details confirming that no diesel, marked gas oil or kerosene products are available for purchase at the site shall be agreed with the Planning Authority and such signage shall be erected at the entrance to the facility.
- 7.3.4. The Planning Authority states that the decision was taken to grant permission for the other pumps on site as there is considered to be a business need for refuelling company vehicles on site and on the basis that the other pumps are less accessible for visiting members of the public. The pumps for which retention permission is sought under the current case are located at the front of the reception/ office building and are openly available to the public.
- 7.3.5. It should be noted that the diesel pumps shown on drawing 0419-1496-01A are now within a wooden enclosure with gated access. Laminated signage reads “Coyle

Fuels Vehicles Only”. A sign on the pump itself reads “Coyle Fuel Trucks and Vans Diesel Only”. The applicant has therefore made some attempt to improve the situation by enclosing the pump and erecting temporary signage. It may be the case that sales of fuel to the public could be eradicated altogether with improved signage as conditioned under Reg. Ref: 19/50575.

- 7.3.6. Notwithstanding this, photographic evidence is presented within the Planning Authority’s response to the first party appeal showing a member of the public using the pump to put fuel into a car. It should also be noted that the diesel pumps are complemented by shelving and storage of solid fuels and gas cannisters for sale.
- 7.3.7. I consider that the best course of action within this case is to grant retention permission for the pumps for a temporary period of five years. This would allow for the Planning Authority to assess the impact of the development and compliance with the temporary permission. Alternatively, a temporary permission would allow for the diesel pumps to the front to be removed when they are no longer required as aging vehicles within the fleet are replaced with newer ones that run on adblue diesel to meet emissions regulations. The permission granted under Reg. Ref: 19/50575 allows for the pumps to the side of the office building to be used for the refuelling of company vehicles with adblue diesel and it is submitted that subject pumps to the front will be used to dispense diesel to older vehicles within the fleet.
- 7.3.8. Overall, I consider that a temporary permission, subject to appropriate conditions would allow for the development to be utilised until such a time that it is no longer required. This would also allow the applicant to put in place plans to decommission the pumps. I would therefore be of the opinion that the development is compatible with the surrounding established development as an ancillary facility that will ultimately be removed.

7.4. **Access and traffic**

- 7.4.1. The third reason for refusal attached to the Council’s notification to refuse permission refers to the development and technical standards set out in Appendix 3 of the Development Plan for visibility splays. The Planning Authority is not satisfied that safe visibility splays can be provided in each direction to the required standards.

7.4.2. Notwithstanding this, the applicant confirms that visibility splays of 70m have been provided from depot entrance in compliance with Condition 9 of PL05E.248403. I do not consider that the development to be retained for the sole use of Coyle Fuel vehicles will give rise to any intensification of use at the existing permitted access to the site.

7.5. **Appropriate Assessment**

7.5.1. The Lough Swilly SAC is approximately 2.9km west of the appeal site. The Mill River which flows into the SAC is 600m from the appeal site. However, the development in question would not involve any processes that would lead to emissions that would have downstream effects on the SAC. Having regard to the location of the site and the nature and scale of the proposed development, no Appropriate Assessment issues arise and it is not considered that the proposed development would be likely to have a significant effect individually or in combination with other plans or projects on a European site.

8.0 **Recommendation**

8.1. It is considered that the development should be granted retention permission for a temporary period for the reasons and considerations hereunder and subject to the conditions below.

9.0 **Reasons and Considerations**

Having regard to the presence of an established business on site and to the ancillary nature of the development to be retained, it is considered that, subject to compliance with conditions below, the development to be retained would not seriously injure the visual amenities of the area or the residential amenities of property in the vicinity, and would be acceptable in terms of traffic safety and convenience. The 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 retained 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 within the specified time and the development shall be carried out and completed in accordance with the agreed particulars.</p> <p>Reason: In the interests of clarity.</p>
2.	<p>This permission shall be for a period of five years from the date of this order. The diesel fuel dispensing pumps hereby authorised for the temporary period shall be fully decommissioned within three months of expiry of the temporary permission. Proposals for removal of the diesel fuel dispensing pumps and associated infrastructure shall be submitted to the Planning Authority for written agreement within three months of the date of this order.</p> <p>Reason: In the interests of orderly development.</p>
3.	<p>Within three months of the date of this order the applicant shall agree in writing with the Planning Authority proposals for a permanent locking mechanism for the fuel pumps to be released when refueling of Coyle fuels only.</p> <p>Reason: In the interests of orderly development.</p>
4.	<p>Within three months of the date of this order signage details shall be erected on the pumps to clarify that they are for use by Coyle fuels only.</p> <p>Reason: In the interests of orderly development.</p>
5.	<p>(a) Within three months of the date of this order, signage details confirming that no diesel, marked gas oil or kerosene products are available for purchase at the site shall be agreed in writing with the Planning Authority.</p> <p>(b) Agreed signage details referred to in Condition 5(a) shall be erected at</p>

	<p>the entrance to the facility within two weeks from the date of the written agreement referred to above being issued by the Planning Authority.</p> <p>Reason: In the interests of orderly development.</p>
6.	<p>Notwithstanding the provisions of the Planning & Development Regulations 2001 (as amended), no other advertisement signs; advertisement structures, banners, canopies, flags, or other projecting element shall be displayed or erected on the building or within the site without the prior grant of planning permission.</p> <p>Reason: In the interests of visual amenity.</p>

Donal Donnelly
 Planning Inspector

5th November 2019