



An
Bord
Pleanála

Inspector's Report

ABP-304868-19

Development

An amendment of Condition 2 of Reg. Ref: 16/51749 (PL05E.248403) to allow for vehicle/ truck/ HGV access and egress by depot staff to the depot between 6am and 8pm Monday to Friday and between 6am and 4pm on Saturday at existing established fuel depot.

Location

Bauville, Keeloges and Clonglash, Buncrana, Co. Donegal.

Planning Authority

Donegal County Council

Planning Authority Reg. Ref.

19/50606

Applicant(s)

Andrew Coyle, Coyle Fuel Ltd.

Type of Application

Permission

Planning Authority Decision

Refuse permission

Type of Appeal

First Party

Appellant(s)

Andrew Coyle, Coyle Fuel Ltd.

Observer(s)

None

Date of Site Inspection

21st 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 of the site.
- 1.2. The appeal site comprises a fuel depot mainly for the purposes of coal distribution. There is a centrally located main coal bagging shed to the east of an office building. To the rear of the bagging shed is a large concrete yard used mainly for loose coal storage. A lorry bay loading area is situated to the east of the bagging shed and bagged coal on pallets align the front of the site for the purposes of forming a sound and visual barrier. There are also fuel refilling facilities on site. The area of the entire site is 1.63 hectares.

2.0 Proposed Development

- 2.1. Planning permission is sought for a proposal described as 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.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Donegal County Council issued notification of decision to refuse permission on the basis that the extension of operating hours will negatively impact on the residential amenities of surrounding dwellings and would therefore be contrary to Development Plan Policy ED-P-14. It is also considered that the proposal would cause noise nuisance at unacceptable times.

3.2. Planning Authority Reports

- 3.2.1. The recommendation to refuse 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:
- Principle of overall development confirmed as acceptable via various historical permissions.
 - Hours of operation have been determined by the Board who granted hours in excess of those applied for under Reg. Ref: 16/51749.
 - Hours outside permission hours would endanger the residential amenities of dwellings in the vicinity at crucial times when the control of noise for the residential enjoyment of these properties is paramount.
 - Proposal deemed to be contrary to Policy ED-P-14(c), (harms amenities of nearby residents), and Policy ED-P-14(g), (creates a noise nuisance).
 - Public health will be adversely affected in terms of sleep and recreation deprivation caused by the impact on amenities and noise nuisance.
- 3.2.2. The Environmental Health Officer recommends that permission is refused taking into account recent complaints regarding operating conditions and the effects of dust and noise on neighbouring property.
- 3.2.3. 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 applicant tries to downplay the scale of the proposal and its impacts on local residents, the landscape, the environment and infrastructure. It is submitted that the proposal assumes the expansion of operations on site and will therefore give rise to more fuel, higher turnover of stock, more traffic, more noise and increased impact on the surrounding area.

- 3.3.3. The second submission describes how the applicant has been in breach of the existing operating hours. It is also submitted that Coyle Fuels have alternative facilities that can be used. The objection is accompanied by an acoustic report dated May 2019 which indicates that there are evident breaches of planning conditions and significant adverse impacts during daytime and night hours.

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 2 attached to the Board's decision states as follows:

The business on the site, and all activities occurring thereon, shall only operate between 08.00 hours and 18.00 hours, Monday to Friday and between 08.00 hours and 14.00 hours on Saturdays. No activity shall take place outside these hours or on Sundays or public holidays.

Reason: *In order to protect the residential amenities of property in the vicinity.*

Donegal County Council Reg. Ref: 05/70314

- 4.3. Permission granted for retention and completion of commercial fuel depot. It was a condition of this permission that *"the fuel depot shall operate strictly within the following hours:*

Monday – Saturday 09:00am – 18.00pm

The fuel depot shall remain closed on Sundays.

Reason: In the interests of residential amenity and to cater for the orderly development of the area."

- 4.4. 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: 19/50574

- 4.5. Notification of decision to refuse retention permission issued by the Planning Authority 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.
- 4.6. This decision has also been appealed to the Board.

Donegal County Council Reg. Ref: 19/50575

- 4.7. 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

- 4.8. 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

- 4.9. 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.
- 4.10. 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

- 4.11. 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

- 4.12. 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.

5.2. 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 by the applicant. The grounds of appeal and main points raised in this submission are summarised as follows:
 - Coyle Fuels is primarily a wholesale operation importing 75,000 tonnes of coal per annum (20% of total imported to Ireland).

- Coyle Coal supply all 32 counties in Ireland through 556 wholesale customers (304 one-day deliveries and 245 require overnight run).
- Drivers must comply with legal stipulations with regards to organisation of working time for all persons performing mobile road transport activities.
- Drivers also facilitate the wishes of wholesale customers to make deliveries before their opening hours, to avoid conflicting traffic impacts on their own retail customers.
- Operational hours requested by the applicant under PL05E.248403 related specifically to the substantive operational activities, e.g. delivery and unloading of bulk coal supplies, bagging of coal, stacking of bagged coal on pallets and storage of pallets to await loading onto lorries for dispatch to wholesalers – appellant has no objection with imposed operation hours in relation to these activities.
- Current application is to allow lorries loaded within stipulated operation hours to leave and return to the premises outside of those hours – reflects need to accommodate drivers to comply with health and safety regulations and to facilitate businesses.
- Five drivers will arrive at the premises, unlock the entrance gates, start the lorries and leave the yard, with final driver locking the gates – lorries return operating in the opposite way. Time taken by each driver to depart or return to the yard is maximum five minutes.
- No objection to Board imposing a condition restricting the number of lorries to the amended delivery hours.
- Reason for refusal was made without the benefit of any actual noise assessment data – scale of noise generated by the lorries is considered by appellant to be negligible.
- Attached noise assessment concludes that the entry and departure of lorries to the facility during early morning or evening periods do not generate adversely high noise levels as measured at the closest noise sensitive receptor – night-time/ early morning noise limit criteria of 45 dB(A) LAeq, 15 min is not exceeded as a result of lorry movement between 6am and 8am,

and the daytime/ early evening noise limit criteria of 55dB(A) LAeq, 15 min is not exceeded as a result of lorry movements up to 8pm.

- Need for an extension to the permitted operating opening hours, to allow delivery vehicles to leave and return to the premises to comply with health and safety requirements and to accommodate customer delivery times is vital to the viability of appellant's business.

6.2. Planning Authority Response

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

- No assessment has been made of noise at a time when there are passing cars on the road and when Coyle Fuels is operating – therefore, an assessment of the situation which would result if the opening hours are extended has not been made.
- Opening hours have been determined by the Board under PL05E.248403.
- Lorries exiting and accessing the site outside permitted opening hours are at the main interface of the business operations with adjoining properties and are a daily occurrence – they must be considered integral to the business operations.
- Planning Authority would otherwise rely on the report and recommendations on file and requests the Board to uphold the its decision.

7.0 Assessment

7.1. Development Plan 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. Policy ED-P-14 sets out a number of criteria that must be met for any proposal for economic development use. The Council's reason for refusal refers to the criteria relating to residential amenity and noise nuisance. It is considered that

the extension of operating hours will negatively impact on residential amenity and cause noise nuisance at unacceptable times.

- 7.2. Retention planning permission was originally granted on site in February 2006 on condition that the fuel depot shall operate strictly between 09:00 to 18:00 hours Monday to Saturday. The applicant sought to extend these hours of operation under PL05E.248403 and the Board attached a condition to this permission requiring the business on site, and all activities occurring thereon, to operate between 08:00 and 18:00 hours Monday to Friday and between 08:00 hours and 14:00 hours on Saturdays. The applicant is now seeking the amendment of Condition 2 of PL05E.248403 to allow for vehicular access to the depot for staff between 06:00 and 20:00 hours Monday to Friday and between 06:00 and 16:00 hours on Saturdays.
- 7.3. The applicant's reason for the extended hours is to allow loaded lorries to leave and return to the premises outside the existing operational hours. It is submitted that the substantive operational activities on site, e.g. delivery and unloading of bulk coal supplies, bagging of coal, stacking of bagged coal on pallets and storage of pallets to await loading onto lorries for dispatch to wholesalers, etc. would continue to take place within the existing operational hours imposed under Condition 2. It is also submitted that the extended operational hours will allow delivery vehicles to leave and return to the premises in compliance with health and safety requirements and to accommodate customer delivery times.
- 7.4. In response to the first party appeal, the Planning Authority refers to a noise report accompanying the appeal which concludes that the night-time/ early morning noise limit criteria of 45 dB(A) LAeq, 15 min is not exceeded as a result of lorry movement between 6am and 8am, and the daytime/ early evening noise limit criteria of 55dB(A) LAeq, 15 min is not exceeded as a result of lorry movements up to 8pm. The Planning Authority considers that no assessment has been made of noise at a time when there are passing cars on the road and when Coyle Fuels is operating. Therefore, an assessment of the situation which would result if the opening hours are extended has not been made.
- 7.5. The noise assessment concludes that truck movements do not have an adverse noise impact on the existing noise climate at the nearest noise sensitive receptor for reasons relating to the low frequency of movements during early morning and late

evening and the relatively low noise associated with the trucks exiting and egressing the site. The applicant has no objection to the Board imposing a condition restricting the number of lorries to the amended delivery hours.

- 7.6. In my opinion, any such condition would be difficult to enforce and there would be potential for an intensification of lorry movements to/ from the site or additional operational activities occurring. There may also be the potential for increased cumulative noise with passing traffic. I would therefore be of the view that the existing hours of operation are appropriate for this elevated location which includes five dwellings within 200m of the site boundary. It should also be noted that a grant of permission for extended hours of operation will increase lorry movements during these hours along a road with substantial ribbon development.
- 7.7. Should the Board be minded to grant permission for the extended hours sought, or indeed extended hours at a later morning and earlier evening time than those sought, it may wish to allow these hours for a temporary period only to enable the Planning Authority to assess the impact thereof. However, I would be in agreement with the previous Inspector who concluded that *“opening at 0800 would not represent a threat to amenity and would be in keeping with the working times commonly required under planning permissions”*.

7.8. **Appropriate Assessment**

- 7.8.1. 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 proposal to extend the hours of operation at the facility 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. I recommend that planning permission should be refused for the reasons and considerations as set out below.

9.0 Reasons and Considerations

It is a policy of the Council (ED-P-10) to 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...”. It is required under Policy ED-P-14 that any proposal for economic development use shall *inter alia* not harm the amenities of nearby residents and not create a noise nuisance. These policies are considered reasonable by the Board. Having regard to the elevated location of the appeal site and the proximity of nearby dwellings, the Board considers that the proposed extension of operating hours will adversely impact on the residential amenities of the area and give rise to noise nuisance at unacceptable times. The proposal would be in conflict with the above-mentioned policies of the Development Plan and would, therefore, be contrary to the proper planning and sustainable development of the area.

Donal Donnelly
Planning Inspector

5th November 2019