



An
Bord
Pleanála

Inspector's Report ABP-305285-19

Location	Mourne Shooting Grounds Ltd., Boraghy, Castleblayney, Co. Monaghan
Planning Authority	Monaghan County Council
Planning Authority Reg. Ref.	19263
Applicants	Mourne Shooting Grounds Ltd.,
Type of Application	Retention
Planning Authority Decision	Grant Permission
Type of Appeal	Third Party
Appellants	Eugene and Rose Deery Wacks
Observer	An Taisce
Date of Site Inspection	14 th November 2019
Inspector	Dolores McCague

1.0 Background

- 1.1.1. Permission to retain development by Mourne Shooting Range for a period of one year was granted by Monaghan County Council in 2007, ref 061843. This is the permission referred to in the current application. The details submitted state that Sean Gililand operates a clay shooting ground at Mourne Clay Shooting Ground, Mourne View, Loughmourne.
- 1.1.2. The development for retention comprised firing point buildings (4no) which provided for outdoor clay pigeon shooting; a large two storey service building (Drawing 04//578-01) including: a gun store, a shop including an area for fishing tackle, a canteen, store, store, toilets and offices, internal staircase, external fire staircase and a small area of 6950 x 2915 identified as a shooting range, and first floor storage. A report by Safety First Consultancy Ltd for Noise Measurements at Mourne Clay Shooting Grounds was supplied.
- 1.1.3. Drawing 04-578-02 shows the site layout and site sections which indicate that berms were provided around the outdoor ranges and that an existing firing point building at the north east corner, outside the berms, was to be demolished. A drawing of mobile traps was included with the application. The two storey building to be retained was parallel to and close to the north of the 'existing dwelling house'.
- 1.1.4. The development involved the use of three sided shelter type buildings to allow clay pigeon shooting into two areas: the larger running east from the access / yard area and the smaller running west, both enclosed by berms. In particular, the area running west was enclosed by berms/earth banks and a hedge (to the north). Dotted lines along the southern edge denoted two sections of fence separated by a gate. This shooting area was indicated for clay pigeon shooting.
- 1.1.5. In 2009 the Board granted planning permission to retain a development similar to the foregoing (233084, PA Reg Ref 08/913) and in 2015 the Board granted planning permission for gates across the exit road. The layout as submitted was similar to the previous applications with the exception of the description of the 'berns' as being 'acoustic mounds surrounding shooting grounds'.

- 1.1.6. In relation to the former clay pigeon shooting area west of the yard, the subject application includes retention of an enlarged firing point building (facing west) together with a concrete walled enclosure to this area.

2.0 Site Location and Description

- 2.1.1. The subject site is located at Boraghy, Loughmourne in a rural area to the south-west of Castleblayney in County Monaghan. The site is part of a small landholding on which there are two dwellings, one to the south of the site is a bungalow facing south – west towards the public road (LS08200) and one to the west of the site, a log cabin, located along a private road which is used as an exit from the lands. The site is to the rear of the bungalow and shares its road access and driveway. A separate exit driveway runs past the log cabin to join the public road north west of the site.
- 2.1.2. North of a controlled access there is a concreted yard with buildings and structures disposed around it. Opposite the entrance barrier, an exit gateway leads to a laneway to the north. To the east of the yard there are structures and buildings facing east towards a berm enclosed area, where it is proposed to install a sound attenuation baffle board. It is worth noting that the appellants' dwelling is to the south east adjacent to the public road. No retention is indicated for this area.
- 2.1.3. To the west of the yard there is a large building termed a shooting range service building, with its long axis running in a north west direction and its main entrance in the south-east elevation. This is not indicated for retention. A hard surfaced area separates this building from buildings and structures to the north. These comprise a large building, entered from the south, with its long axis running at right angles to the shooting range service building, and which is open on its north western side, and faces onto an area enclosed by high thick concrete walls. There are baffles projecting at an angle from the side walls (to avoid side ricochet), and overhead baffles (to avoid skywards straying bullets), and a feature at the end termed a back stop. This building and enclosure are indicated for retention. Towards the western end of the building there is a smaller building adjoining to the south with double doors to the front, which is identified on the drawings supplied as a storage shed. This building is also indicated for retention.

2.1.4. The applicant's dwelling is the bungalow adjoining and to the south of the Shooting Range. The appellants' dwelling is approximately 140 metres to the south-east.

3.0 Proposed Development

3.1.1. The proposal is in two parts:

1) Retention of modification to previously permitted shooting range permitted under ref:061845 to include the following variation to firing point building No 4 and associated range development as constructed. Retention of storage building as constructed.

2) Permission for the installation of sound attenuation baffle board and variation of permission Ref: 08913 (An Bord Pleanála appeal reference number PL18.233084) to remove Condition no. 6 of that planning permission and all associated site development works

3.1.2. It is stated in a planning report, by Ger Fahy planning consultant, on behalf of the applicant that the modifications which were carried out to the firing point building 4 were largely done for licencing and safety purposes. The firing point building 4 and associated range compound has been altered from that which was originally approved under 061845. The building as constructed is lower in height than that which was permitted, and is longer. The size of the compound has not increased and the earthen embankment remains as permitted. The perimeter walls of the compound are largely the same as that which was permitted albeit that there was a slight kink in the wall shown on the application drawings and that it is not (/) was not constructed, such an alteration is minimal and would be covered by the de minimus principle. A difference in the ground levels has resulted in the walls being higher than that which was approved. This application seeks to regularise these minor alterations which took place and permission is sought to retain the variation to the range as constructed. This shooting grounds has been designed and constructed to comply fully with SI No 622/2011 Firearms (Authorisation of Rifle or Pistol Shooting Ranges) Regulations 2011. These regulations provide the necessary specification for all elements of the shooting ranges including the berms and baffles. Baffle means a structure that is capable of capturing fired projectiles and ricochets within the active shooting area. All of the baffles have been constructed and erected in accordance

with the regulations and this facility is fully licenced and insured. The planning consultant states that these alterations do not alter the use of the shooting grounds in any way.

- 3.1.3. The proposed sound baffle board is intended to be located in the existing compound to the south of the site and the purpose of same is to further reduce the noise impact of the development and to allow for the removal of condition no 6 to remove the need for noise monitoring having regard to the passage of time and the noise monitoring which has been carried out to date.
- 3.1.4. The application was accompanied by: a legal opinion titled 'Refusal by An Bord Pleanála to amend Condition No 6 relating to noise monitoring attached to Mourne Shooting Grounds Ltd'; a noise report; and a report on proposed structural alterations by the noise and acoustic consultants.

4.0 Planning Authority Decision

4.1. Decision

The planning authority decided (2nd August 2019) to grant permission subject to 6 conditions, including:

2 (a) During operation, the noise level from within the premises, measures at noise sensitive locations in the vicinity, shall not exceed:

- (i) An LArT value of 55 dB(A) during the period 08.00 to 20.00 hrs from Monday to Saturday (inclusive), and
- (ii) An LAeqT value of 45 dB(A) at any other time.

(b) All sound measurements shall be carried out in accordance with ISO Recommendations R 1996, 'Assessment of Noise with Respect to Community Response' as amended by ISO Recommendation R 1996/1, 2 and 3 'Description and Measurement of Environmental Noise', as appropriate.

3 (a) the proposed sound attenuation baffle board shall be installed within 3 months from the date of this grant of planning permission. The Applicant shall notify the Planning authority in writing within 1 month of the date of completed installation of the baffle board.

(b) Noise Monitoring shall take place for a period of 48 hours, when the premises is in operation, once in every 6 month period. The monitoring shall be carried out by a suitably qualified independent person.

(c) the first Noise Monitoring Report shall be submitted to the Planning Authority within 3 Months of the date of installation of the baffle board.

(d) Subsequent Noise Monitoring Reports shall be submitted to the Planning Authority every 6 months thereafter.

(e) Any proposed amendment to the requirement of submitting 6 monthly Noise Monitoring Reports shall be submitted to and agreed in writing with the Planning Authority.

4.2. Planning Authority Reports

4.2.1. Planning Reports

4.2.1. The planning report includes:

- The removal of condition 6 in its entirety would be premature without further noise monitoring.
- The proposed amendment of condition 6 would strengthen the noise monitoring requirements.
- In addition condition 5 of PL 18.233084 will remain applicable.

4.2.2. Other Technical Reports

Environment Section – locally important aquifer of high-extreme groundwater vulnerability and currently moderate status - conditions 1) to prevent the discharge of polluting matter to waters; 2) drainage design; 3) oil/chemical bunding; 4) waste disposal.

EHO – no objection. Condition 6 could be amended / replaced so that monitoring would be carried out on a six monthly basis unless otherwise agreed with the planning authority. The works in relation to the acoustic barrier and inside lining should be carried out within three months of grant of permission. Noise monitoring shall be carried out on completion of the said works with the results of same being submitted to the planning authority within six months of grant of permission.

4.3. **Prescribed Bodies**

Development of Culture, Heritage and the Gaeltacht, DAU re archaeology which includes: the retention and construction works are within the constraint area for Recorded Monument MO024-019 ringfort which is subject to statutory protection. Recommending an archaeological assessment.

An Taisce, which includes: the removal of condition 6 on noise monitoring is undesirable.

4.4. **Third Party Observations**

4.4.1. Third party observations on the file have been read and noted.

5.0 **Planning History**

Reg. Ref.06/1845 - Retention - temporary retention for one year was granted, for of two storey shooting range service building incorporating an indoor shooting range, gun store, shop floor, fishing tackle store, offices, canteen, storage and toilet facilities, 4no firing point buildings, sewerage facilities, car parking area, 4no fire escape doors to ground floor, 1no fire staircase and 1no fire escape door to first floor, earth banks, clay pigeon traps, and firing towers, alternative use of existing laneway to access the development and all associated development works. Copy of file is attached to 233084. The report by the Director of Planning states that on the date of his inspection the operators stated that the range was established 14 years previously and he also noted that the noise was loud at the Wicks boundary.

Conditions included:

Condition1a. 1 year retention to enable the planning authority to reassess the impact of the development having regard to changes in technology and design during the period of five years.

Condition 4g. – within three months of grant of this permission, the applicant is required to submit proposals to significantly reduce noise levels at the boundaries of the site of the development. All proposals to be approved by the local authority and

all works on the approved proposals to be completed within nine months of the grant of this permission.

4h – Within one month of grant of this permission, the applicant is required to install 24-hour continuous noise monitoring carried out by an independent suitably qualified person. All details of monitoring and reporting to be agreed and approved by the planning authority.

4i. – The activities on site shall not give rise to noise levels at the nearest noise sensitive receptor which exceed the following sound pressure limits:

Daytime (08.00-20.00 hrs) 55 dB(A) Leq (1 hour)

Night-time (20.00-8.00 hrs) 40 dB(A) Leq (15 minutes)

At no time shall the noise levels exceed the background level by 10 dB(A) Leq.

4j. – 95% of all noise levels measured shall comply with the specified limit values. No individual noise measurement shall exceed the limit value(s) by more than 2 dB(A).

4k. – there shall be no tonal or impulsive noise at noise sensitive locations during night-time hours due to operations at this development.

4l. – Activities at this development shall be strictly confined to the hours submitted to the Planning Authority. In the case of Bank Holidays operations shall cease at 17.30 hours with a half hour clean up.

Reason: In the interests of public health and to protect the amenity of the area.

233084, PA Reg Ref 08/913 - Retention granted by the Board on foot of the planning authority's decision to grant, for an outdoor shooting range facility incorporating 4No firing point buildings, clay pigeon traps and buffer earthen banks together with a 2 storey shooting range service building incorporating indoor shooting range, gun store, shop floor, fishing tackle store offices, canteen storage and toilet facilities, use of existing laneway as a one-way system of access and egress from the facility and all ancillary site development works including the installation of a proprietary wastewater treatment system and polishing filter to serve the shooting range building.

Conditions include:

4. (a) The development shall operate the following hours during daylight only:

No opening on Mondays

Tuesday 1000 hours to 1800 hours

Wednesday to Friday 1000 hours to 2100 hours

Saturday 1000 hours to 1900 hours

Sunday 1000 hours to 1800 hours.

(b) No shooting shall take place under artificial light.

Reason: In the interest of residential amenity.

5. (1) During the operational phase of the proposed development, the noise level from within the premises, measured at noise sensitive locations in the vicinity, shall not exceed -

an LArT value of 55 dB(A) during the period 0800 to 2200 hours from Monday to Saturday (inclusive), and

an LAeqT value of 45 dB(A) at any other time.

All sound measurements shall be carried out in accordance with ISO Recommendations R 1996, Assessment of Noise with Respect to Community Response as amended by ISO Recommendations R 1996/1, 2 and 3, Description and Measurement of Environmental Noise, as appropriate.

Reason: To protect the amenities of properties in the vicinity of the site.

6. Noise monitoring shall take place during operating hours. The results of monitoring shall be evaluated by a suitably qualified independent person. The findings shall be reported to the planning authority on a quarterly basis, or as otherwise agreed in writing with the planning authority.

Reason: In the interest of residential amenity.

244828, PA Reg Ref 15/49 - permission, sought for the erection of security gates along the approved exit lane from existing shooting grounds together with the amendment of condition no. 6 of An Bord Pleanála Planning Permission Reference No. PL18.233084 in respect of the premises. Condition no. 6 which currently reads 'Noise monitoring shall take place during operating hours. The results of monitoring shall be evaluated by a suitably qualified independent person. The findings shall be reported to the planning authority on a quarterly basis, or as otherwise agreed in writing with the planning authority' to be amended to read 'Noise monitoring shall be

carried out on a once annual basis only. The results of monitoring shall be evaluated by a suitably qualified independent person. The findings shall be reported to the planning authority once annually.’ Permission granted for the erection of security gates and refused for the amendment to condition no. 6 for the following reason: Condition 6 of the original planning permission for the shooting range, granted under An Bord Pleanála appeal reference number PL 18.233084 (planning register reference number 08/913), relates to noise monitoring of shooting range activities. The proposed amendment of this planning condition is not considered to be development within the meaning of Section 3(1) of the Planning and Development Act, 2000. Neither would the proposed installation of security gates give rise to any change relating to noise (or the requirement for noise monitoring) in terms of the operation of the shooting range. In these circumstances, where the matter at issue would not in itself constitute development, the Board is precluded from giving any further consideration to the granting of permission for the amendment sought. The Board noted the Inspector’s second recommended condition as set out in the Report, which had the merit of providing some level of clarification on the matter at issue, but decided not to accept that recommendation for the same reasons as set out above, that is, it did not relate to development now applied for and hereby permitted.

16/213 permission to erect a 2.4m high acoustic barrier adjacent to existing clay pigeon firing point and provision of additional planting along a section of the boundary – FI.

16/368 Retention to upgrade safety and acoustic attenuation measures at existing approved shooting range no. 4 comprising the construction of a low profile firing point building which has replaced previously approved higher firing point building, provision of 3m high reinforced concrete boundary walls to perimeter of existing shooting range which has replaced previously approved lower sheeted boundary panels, provision of additional ground and overhead baffles within the existing shooting range and the erection of a shed for the storage of equipment and machinery for use within the facility together with all ancillary site development works, (details are attached to the subject file).

Refused for two reasons:

1 having regard to the fact that the applicant has failed to comply with the noise monitoring requirements set out under condition 6 of appeal decision PL18.233084 which relates to the operations on site, and furthermore has failed to comprehensively demonstrate compliance with the noise limitations imposed under condition 5 of appeal decision PL18.233084, it is considered that to permit further development of the site could seriously injure the amenity of properties in the vicinity of the site, which would be contrary to the proper planning and sustainable development of the area.

The applicant has failed to comply with all the conditions of appeal decision PL18.233084 which relates to the operations on site. Therefore it would be inappropriate for the Planning Authority to grant planning permission for the retention of the subject development in such circumstances, as to do so would facilitate the expansion of an unauthorised development. to permit the development in the absence of compliance with the conditions of appeal decision PL18.233084 would be contrary to the proper planning and sustainable development of the area and would set an undesirable precedent for other similar developments.

Planning report includes: it should be noted that separate to the planning application history quoted, there has been a history of enforcement action pertaining to this site.

6.0 Policy Context

6.1. Development Plan

The Monaghan County Development Plan 2019-2025 is the operative plan. Relevant provisions include:

Industry and Commercial developments - the Council is committed to facilitating developments which contribute to the economic development of the County and create sustainable employment opportunities. Notwithstanding this, the impact of such proposals on the landscape and the environment must be carefully assessed.

Policy for industry and commercial development, ICP 1, includes:

h) Small scale indigenous industrial/commercial development in the rural area outside of designated settlements may be permitted where it can be demonstrated that:

- There is no alternative suitable site within the boundaries of nearby settlements.
- The design of the development can integrate with the surrounding landscape.
- The associated traffic generated by the proposal is appropriate for the surrounding road network and will not result in unsustainable traffic movements and will not necessitate roads improvements that would damage the character of the rural roads in the area.
- The proposal will not detract from the character of the rural landscape.

6.2. Other

6.2.1. SI No 622/2011

Firearms (Authorisation of Rifle or Pistol Shooting Ranges) Regulations 2011, issued under Section 33 of the Criminal Justice Act 2006 (No. 26 of 2006)) and 27 of the Firearms Act 1925, sets out minimum standards for the design, construction and maintenance of rifle and pistol target shooting ranges. It also provides for the minimum standards that the owner or operator of a rifle or pistol target shooting range must comply with in order to be granted an authorisation for the operation of such a shooting range.

6.2.2. The Garda Commissioner's Guidelines as to the Practical Application and Operation of the Firearms Acts 1925-2009

These guidelines (issued 28 September 2018) are a 'Best Practice' document which chief superintendents and superintendents shall have recourse to when considering applications for firearms certificates within their respective Divisions or Districts, and is viewed as an aid to the implementation of the Firearms Acts 1925 to 2009.

Authorisation of Rifle and Pistol Clubs and Shooting Ranges for Target Shooting
Section 33 of the Criminal Justice Act 2006, was commenced on 1st August 2009 and inserted a new section 4A into the principal Act and provides for the authorisation of rifle and pistol clubs and shooting ranges.

Club/Range Guns

Section 4A of the Firearms Act 1925, as inserted by section 33 of the Criminal Justice Act 2006, requires all rifle and pistol clubs and shooting ranges to be

authorised by the local superintendent. Section 4A of the Firearms Act 1925, as inserted by section 33 of the Criminal Justice Act 2006, also introduced the requirement for each shooting range to have a firearms range certificate in force, prior to applying to the relevant superintendent for an authorisation under the Act. A firearms range certificate is issued by the Firearms Range Inspector appointed by the Minister and applications for range certification should be made to the Department of Justice and Equality on the appropriate application form, by the owner or operator of the shooting range.

When considering an application for an authorisation for a rifle/pistol club or shooting range under this section, superintendents should be cognisant of section 33 of the Criminal Justice (Miscellaneous Provisions) Act 2009, which introduced a new section 4C into the Firearms Act 1925.

Clay pigeon shooting venues and paintball sites are not defined as shooting ranges and therefore section 33 only applies to ranges used for rifle and pistol target shooting.

6.3. Natural Heritage Designations

The nearest Natura sites are Slieve Gullion SAC (Site Code UK0030277), located c 25km straight line distance north east of the subject site, and Dundalk Bay SAC (Site Code 000455) and Dundalk Bay SPA (Site Code 004026) located c 30km straight line distance south east of the subject site.

6.4. EIA Screening

- 6.4.1. Having regard to the nature and scale of the proposed development and the absence of any significant environmental sensitivity in the vicinity 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.

7.0 The Appeal

7.1. Grounds of Appeal

7.1.1. An appeal against the planning authority's decision has been submitted by Eugene Wacks and Rose Deery Wacks. The issues raised include:

- The removal of condition no. 6 does not constitute development. The removal of the condition would provide further relaxation of any regulations on this facility and result in a further impact on the amenities of their residence and family life.
- S 35 of the 2000 Act, from 5th October 2010, provides that planning permission can be refused for non compliance with a previous permission. The applicant has not complied with previous planning permission, specifically noise monitoring per condition no. 6. Noise monitoring, has not been carried out as required or reported on a quarterly basis. This is an enforcement issue and a matter for the planning authority but it should be a reason for refusal. The applicant has failed to demonstrate compliance with the noise limitations imposed under condition no. 5 of 233084.
- The legal opinion contends that matters relating to licensing and insurance requirements for health and safety are not planning matters. There is no provision in the planning acts to grant permission or retention for an unauthorised development in order to allow compliance with licensing or insurance requirements. There is no evidence or noise data that the proposed sound attenuation baffle will result in noise reduction at all. The legal opinion that the baffle will remove the requirement for noise monitoring is merely a guess and her reference to baffle boards indicates that the author was unaware of noise attenuation technology.
- There has been repeated unauthorised development and retention permissions sought. An Bord Pleanála has previously refused to grant permission to applications with similar characteristics. The proposed development would further injure the local environment, residential amenity, the value of property among other things.

- They refer to submissions by An Taisce, the Dept. of Culture, Heritage and the Gaeltacht, and also Friends of the Irish Environment, which they attach.
- They are a farming family farming land directly beside the shooting grounds. It would potentially be very dangerous for their health if condition 6 was removed.
- The severity of the noise which emanates has an impact on their ability to do the most banal of everyday chores. It acts as a significant detriment to their children's ability to study in their home, to undertake agricultural activities, to entertain visitors in their home, to leave the windows and doors open and to garden, among other things. There has never been any wildlife consideration.
- The facility is permitted to operate six days per week, potentially 58 hours per week, 3,000 hours per year over 312 days. The applicant hosts various leagues. One this spring had 58 applicants and 9 rounds of shooting each with 50 shots with 2 weeks having double rounds, 2,900 shots from this, per weekend, often 5,800 due to the nature of the league, in addition to other shooting; 26,100 shots from this league alone.
- It would be unconscionable to grant planning permission or to consider removal of previously ascertained conditions, particularly in light of the lack of compliance with same. This latest pistol/rifle range means that shooting takes place regularly simultaneously with the other ranges on site leading to a further cause of nuisance. To allow the continued expansion of this facility along with the removal of conditions is contrary to amenity, public health and security, common good and proper planning.

7.2. Applicant Response

7.2.1. A response to the grounds of appeal has been submitted by Ger Fahy Planning on behalf of the applicant, which includes:

- They note the planning history 06/1845; 233084, 08/913; and 244828, 15/49.
- The Monaghan County Development Plan is referred to including in relation to tourism.

- Mourne Shooting Grounds is a long established tourism resource. The purpose of the application is simply regularising a number of minor alterations made to permitted Shooting Compound which were largely required to comply with the licencing and insurance requirements for health and safety reasons. These types of alterations are relatively minor in nature and are not visible from the public road and do not have any impact on the proper planning and development of the area but are simply to improve the safety and well-being of those using the shooting grounds. The second aspect of this proposed development is the provision of new sound attenuation baffle boards to facilitate the removal of the requirement for noise monitoring of this long-established development.
- The third party's allegation that the proposed development does not constitute development is unsubstantiated, this is confirmed by the legal opinion submitted with the application.
- The planning system is not static and the development management process provides that developments may change over time and circumstances change over time. There must be flexibility to enable conditions of a permission to change. The applicant has carried out extensive noise monitoring since the development was permitted. There have been no breaches of condition no. 5 and no exceedances of the noise limits. The development of the baffle board enables the PA and Board to amend condition 6 to allow for the removal of the requirement for noise monitoring in the future. The requirement to stay within acceptable limits will remain as condition no. 5. Breaches can be addressed by enforcement. There have been no breaches over ten years and the third parties have never substantiated their allegation of breaches of noise limits by providing any evidence of such breaches.
- It must be noted that when a shooting ground is operational the noise generated at a shooting ground is consistent and does not change, this is due to the fact that the maximum number of people who can shoot is determined by the number of shooting stands available and this maximum number has never changed. The types of guns used are the same, the locations remain

the same. There is no need to continually monitor the noise once it has been monitored for a certain period of time.

- Contrary to the allegations, their residential amenity has not been diminished over 10 years. They have never proven any breach of noise limits and there has never been any enforcement action taken in respect of a breach of noise limits. The third parties have never provided any evidence of a breach of noise limits.
- The third party alleges that there has been non-compliance with condition 6 (reporting of monitoring), that monitoring has not been carried out and has not been reported to the planning authority. The third party accepts that enforcement is a matter for the planning authority. The third parties alleges that the applicant has failed to comprehensively demonstrate compliance with the noise limitations imposed under condition no. 5. The third parties suggest that the attenuation by the proposed baffle boards is a guess and there is no evidence to support it. They refer to the legal opinion and query whether the barrister was aware of the noise attenuation technology.
- The development should not be refused on the basis of past failures to comply. The vast majority of the development is fully authorised and the principle of the use is well established. The retention elements are minor. The applicants dispute that they have never demonstrated compliance with the noise limits. The reference to baffle boards in the legal opinion is a reference to an element of the range that was previously permitted and it is incorrect to state that Ms Moran Long BL was not aware of the proposal. The purpose of the new baffle boards is to further reduce noise levels at noise sensitive receptors and the location and specification is based on the advice of the noise expert, and not merely a guess.
- The third party alleges that the applicant has sought retention on numerous occasions. This is the second retention application and it relates to minor alterations. The applicant has operated in good faith and in compliance with planning permissions.
- The reference to another shooting grounds in Wicklow is irrelevant. It would seem as if the appellants are attempting to revisit the principle of the entire

shooting grounds, which is outside the remit of this application. There is no basis for attempting to reconsider the principle of the development. This application seeks to regularise these minor alterations which took place and permission is sought to retain the variation to the range as constructed.

- All that is being sought is to regularise the minor alterations to the previously permitted compound which arose due to the need to comply fully with SI No 622/2011 Firearms (Authorisation of Rifle or Pistol Shooting Ranges) Regulations 2011. These regulations provide the necessary specification for all elements of the shooting ranges including the berms and baffles. This Range is fully authorised by An Garda Síochána by virtue of powers conferred by Section 2(5)(a) of the Firearms Act 1925, inserted by Section 15(b) of the Firearms Act 1964 and as amended by Section 3(d) of the Firearms Act 1971 subject to 13 conditions. The planning consultant's office has consulted the Range Authorisation and it can be made available to the Board for Inspection on the date of inspection, but cannot be placed on a public file for security reasons. Condition no. 13 is quoted which states that the Mourne Shooting Grounds as currently constitutes is in compliance with the requirements of Garda Ballistic personnel...
- Section 34(13) of the Planning and Development Act 2000-2018 applies in this instance. The requirements of An Garda Síochána under the Firearms Act and the requirements of SI 722 must be complied with in their own right, similarly to the requirements of the Fire Officer and similarly results in alterations which need to be regularised. These changes are largely contained within the compound but as this is an outdoor range the provisions of S4(1)(h) do not apply and these changes are regarded as material and require regularisation.
- Observation by external parties – Dept of Culture, Heritage and the Gaeltacht and Friends of the Irish Environment. They agree with the planner's response to the Dept submission – having regard to the nature and scale of the proposed development an archaeological assessment was not required; the compound was constructed on the same footprint as that previously permitted

(961845). The letter from Friends of the Irish Environment should not be accepted as it is an attempt to piggy back on the third party appeal.

- Re negative impact on residential amenity – no details are provided in relation to the case referred to, re The Chartered Institute of Environmental Health’s 2003 Report Guidance on The Control of Noise, and separation distance of 1km, reference to the inspector’s report on 233084, intense shooting and the potential for the facility to operate up to 58 hours per week; the response states that no expert evidence has been brought, no evidence of breach of noise limits, no reference number is given for the court case and therefore it is not appropriate to comment, the reference to the inspector’s report is part of a process whereby the development was permitted and can-not be revisited and there is no intense shooting 6 days per week.
- Re. that it would be unconscionable to grant permission or to consider removing the conditions and that there has been unlawful expansion, and also that this latest pistol / rifle range means that shooting takes place regularly simultaneously; there has been no unlawful expansion, there has been no expansion and no increase in the footprint of the shooting ranges from that permitted in 2009. Condition 5 will remain in place and can be enforced.
- The development management guidelines are cited: 7.3 re conditions. Condition no 5 is unnecessary and is no longer reasonable. A review of other similar permissions granted by An Bord Pleanála will show that no other shooting grounds require monitoring to be carried out indefinitely. A sample is attached.
- Many of the issues raised in the third party appeal are irrelevant as they relate to the principle of the development and are unsubstantiated and could be regarded as vexatious.
- Attached are:
 - a list of three selected Board decisions with a noise condition; and
 - a noise report by FR Mark and Associates, Noise and Acoustic Consultants, which includes – the overall noise impact from the shooting range on Mr and Mrs Wack’s home has been controlled by lining the inside

face of the ranges with highly sound absorbent material, screening by large long earth bunds/undulating ground and absorption over soft rough agricultural land. I recommend to Mourne Shooting Grounds to erect a 10 meter long, 2.4m high acoustic barrier to the front of the range facing the nearest dwelling that of Mr and Mrs Wack's to further assist in noise reduction. The material used in this baffle is to comprise of timber sheeting or similar with no gaps and a self weight of at least 25kg/m/sq, eg marine ply. The inside face of the baffle is to be covered with 50mm dense mineral semi rigid rockwool slabs density >15kg/m. The acoustic barrier will be angled towards the shooters position (c30⁰). Providing this additional barrier as well as lining the inside faces with absorbent materials will also minimise the build-up or reverberant sound near the shooters position. This structure will have a positive impact on the noise levels and it is my calculation that it will reduce noise levels by 1 to 2 DB at the nearest dwelling that of Mr and Mrs Wack's. Extensive monitoring over a variety of busy days in the past 10 years has shown that noise limits set for Monday to Saturday and lower limits for Sunday or other times has not been exceeded at the single residential property nearest to the range.

7.3. Planning Authority Response

No response received.

7.4. Further Responses

- 7.4.1. A response to the applicant's response to the grounds of appeal has been submitted by Eugene Wacks and Rose Deery Wacks, it deals with the applicant's rebuttal in detail and includes:
- 7.4.2. The applicant is suggesting that they should employ experts to demonstrate that their lives have been and are impacted by this development. They have the same expenses of any working family and it is ignorant to suggest that they should have expert evidence to demonstrate their very legitimate claims. This would be most disproportionate given that their property has been significantly depreciated in value by the applicant's business. They note the caution that should be exercised when

dealing with expert reports, paid for by one of the parties; citing *Donnelly v Dunnes Stores* (2019) IEHC 347.

7.4.3. There are numerous items of correspondence and other data attached.

7.5. **Observations**

An Taisce has submitted an observation on this appeal, which includes:

They consider that the subject appeal raises legitimate and well-grounded concerns in relation to impacts on local amenity, particularly with regard to the proposed amendment to condition 6 of 233084.

8.0 **Assessment**

8.1.1. The issues which arise in relation to this appeal are: appropriate assessment, the adequacy/accuracy of the retention application details, the provision of the sound attenuation baffle boards and removal of condition 6, and other issues and the following assessment is dealt with under those headings.

8.2. **Appropriate Assessment**

8.2.1. Having regard to the nature and scale of the proposed development and nature of the receiving environment 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.

8.3. **The Adequacy/Accuracy of the Retention Application Details**

8.3.1. The proposed development is stated to be intended to regularise minor alterations which have taken place and that permission is sought to retain the range as constructed.

The application for this part of the development is described as retention of modification to previously permitted shooting range permitted under ref:061845 to include the following variation to firing point building No 4 and associated range development as constructed. Retention of storage building as constructed.

- 8.3.2. The other information provided with the application includes a site layout @1:500, elevations of the north-east shooting range compound wall, stated to be @1:100, actually @1:250, a shooting range plan @1:100, plans and elevations of the firing point building @1:100 and of the storage shed @1:100, a longitudinal section @1:200 indicating existing ground level and proposed ground level, which correspond except at the front of the building where the proposed ground level is indicated as being 0.05m below existing ground level. There are no details of the excavation required for the construction of the buildings compound or wall. There are no construction details or specifications for these structures. In this regard I cannot concur with the assessment that the structure, having regard to its nature and scale does not require archaeological assessment as required by the Development of Culture, Heritage and the Gaeltacht.
- 8.3.3. I note that the planning consultant states on behalf of the applicant that the development proposed for retention does not involve change of use. It is stated that the alterations are relatively minor in nature and are not visible from the public road and do not have any impact on the proper planning and development of the area but are simply to improve the safety and well-being of those using the shooting grounds.
- 8.3.4. It is stated that they are required to comply with SI No 622/2011 Firearms (Authorisation of Rifle or Pistol Shooting Ranges) Regulations 2011. These regulations provide the necessary specification for all elements of the shooting ranges including the berms and baffles. This Range is fully authorised by An Garda Síochána by virtue of powers conferred by Section 2(5)(a) of the Firearms Act 1925, inserted by Section 15(b) of the Firearms Act 1964 and as amended by Section 3(d) of the Firearms Act 1971 subject to 13 conditions.
- 8.3.5. I note that these regulations do not cover clay pigeon shooting grounds. 'The Garda Commissioner's Guidelines as to the Practical Application and Operation of the Firearms Acts 1925-2009' state that clay pigeon shooting venues and paintball sites are not defined as 'shooting ranges'.
- 8.3.6. From the information available on this file I am unable to conclude that the use of this compound is the same use as that for which planning permission was previously granted. The Board's relevant history files are attached to the subject file: 244828, 233084 and 06/1845 a copy of which is included as part of 233084. As referred to

earlier under the heading 'planning history' the previous applications identified the area west of the yard as a clay pigeon shooting area which is therefore the use permitted in this area.

- 8.3.7. No information has been provided in relation to its use as a shotgun/pistol shooting range, which appears to be the intended purpose for which it has been constructed. There is no information available in relation to any of the possible impacts of such use.
- 8.3.8. In my opinion the development of the compound west of the entrance yard, has arisen as a result of the fact that it's use has evolved from a 'clay pigeon shooting area' to a 'shooting range' to use the terminology in the Garda Commissioner's Guidelines. This change has not been reflected in any planning permission for change of use. I note the statement by the planning consultant in the application submission and in the appeal response, that these alterations do not alter the use of the shooting grounds in any way, however in my opinion, on the basis of the information before the Board it cannot be concluded that a change of use is not involved in the retention; that a change of use may have taken place, which has led to the requirement to make the physical changes the subject of this retention application.
- 8.3.9. I also note that the current application is for retention of the development as constructed which would arguably cover all aspects of the development including its use.
- 8.3.10. In my opinion the application documents, including the drawings, notices and forms do not accurately reflect the development proposed for retention, which includes retention of use of this compound as a rifle and pistol shooting range. The details submitted are therefore inadequate to describe and document the development the subject of the retention part of the subject application and therefore permission for retention cannot be granted.

8.4. The Proposed Development

- 8.4.1. In addition to the retention element the subject application includes proposed development namely the installation of sound attenuation baffle board and variation of permission Ref: 08913 (An Bord Pleanála appeal reference number PL18.233084)

to remove Condition no. 6 of that planning permission and all associated site development works.

- 8.4.2. In my opinion the removal Condition no. 6 could be considered in the context of the provision of a baffle board directed at sound attenuation and the definition of development within the meaning of section 3(1) of the Planning Acts 2000 as amended should not be a barrier to considering both aspects of the proposed development.
- 8.4.3. In the original permission for retention: 06/1845, which is referred to in the application notices, condition 4h states – within one month of grant of this permission, the applicant is required to install 24-hour continuous noise monitoring carried out by an independent suitably qualified person. All details of monitoring and reporting to be agreed and approved by the planning authority. It appears that this 24-hour continuous noise monitoring was not installed.
- 8.4.4. Condition no. 6. of 233084, is the condition referred to in the application notices. It states:
- Noise monitoring shall take place during operating hours. The results of monitoring shall be evaluated by a suitably qualified independent person. The findings shall be reported to the planning authority on a quarterly basis, or as otherwise agreed in writing with the planning authority.
- 8.4.5. It appears that the findings of noise monitoring have not been reported to the planning authority on a quarterly basis.
- 8.4.6. The applicant's submission is that the proposed sound baffle board is intended to be located in the existing compound to the south of the site and the purpose of same is to further reduce the noise impact of the development and to allow for the removal of condition no. 6 i.e. to remove the need for noise monitoring, having regard to the passage of time and the noise monitoring which has been carried out to date. They argue that the provision of the baffle board enables the planning authority and Board to amend condition 6 to allow for the removal of the requirement for noise monitoring in the future; the requirement to stay within acceptable limits will remain as condition no. 5. Breaches can be addressed by enforcement; there have been no breaches over ten years and the third parties have never substantiated their allegation of breaches of noise limits by providing any evidence of such breaches.

8.4.7. A noise report by FR Mark and Associates, Noise and Acoustic Consultants, includes:

I recommend to Mourne Shooting Grounds to erect a 10 meter long, 2.4m high acoustic barrier to the front of the range facing the nearest dwelling that of Mr and Mrs Wack's to further assist in noise reduction. The material used in this baffle is to comprise of timber sheeting or similar with no gaps and a self weight of at least 25kg/m/sq, eg. marine ply. The inside face of the baffle is to be covered with 50mm dense mineral semi rigid rockwool slabs density >15kg/m. the acoustic barrier will be angled towards the shooters position (c30⁰). providing this additional barrier as well as lining the inside faces with absorbent materials will also minimise the build up or reverberant sound near the shooters position. This structure will have a positive impact on the noise levels and it is my calculation that it will reduce noise levels by 1 to 2 DB at the nearest dwelling that of Mr and Mrs Wack's.

8.4.8. The noise report further states that extensive monitoring over a variety of busy days in the past 10 years has shown that noise limits set for Monday to Saturday and lower limits for Sunday or other times has not been exceeded at the single residential property nearest to the range.

8.4.9. In my opinion there is nothing unacceptable in the proposed provision of the acoustic barrier/baffle board(s). However insofar as it is part of the proposal that there would no longer be a requirement for the noise monitoring, currently required by the condition attached to 233084, I would have concerns at the diminution in control of noise that this would involve.

8.4.10. I note that the decision of the planning authority was to vary rather than remove the condition, such that the noise monitoring reporting would be required 6 monthly rather than quarterly.

8.4.11. It is argued by the appellant that the noise monitoring requirements have never been fully adhered to. The counter argument made by the applicant is that extensive monitoring has been carried out which has shown no breaches of the limits and that the extent of monitoring required is unduly onerous. The applicant places significant reliance on the argument that the appellant has not produced evidence of breach of the noise limits. While I note that noise limits would remain in place, it should also be

noted that the removal of the monitoring condition would place a greater burden on the appellants as regards the production of evidence of breach of noise limits.

8.4.12. I am inclined to agree with the appellants that the onus of proof should not be placed on them; and that they should be able to rely on noise monitoring to help safeguard their amenities.

8.4.13. As regards the argument made by the applicant that no breaches of the noise limits have been recorded during monitoring, I would find it more useful if greater detail had been provided regarding the circumstances of the monitoring e.g. was the monitoring visit unannounced or pre-arranged? what are the contractual arrangements in place to ensure the independence of the noise consultant?

8.4.14. it should also be noted that the use of part of the facility as a shotgun and pistol target shooting range, referred to under the foregoing heading, may involve intensification of use by offering a wider range of services to the visiting public and may also involve an increase in noise from different projectiles. Having regard to the paucity of information in this regard no conclusion can be reached regarding noise impact.

8.4.15. I note that the planning authority, who have the responsibility of enforcing the conditions, are willing to accept a longer monitoring interval. The Board may find this acceptable. I am inclined to the view that the condition should be retained as is.

9.0 Recommendation

In accordance with the foregoing assessment, I recommend that

- (1) planning permission be refused for retention of modification to previously permitted shooting range permitted under ref:061845, that
- (2) planning permission be refused for the removal of condition no. 6 of PI18.233084 and that
- (3) planning permission be granted for the proposed installation of the sound attenuation baffle board, for the following reasons and considerations.

10.0 Reasons and Considerations (1)

Articles 17 to 23 of the Planning and Development Regulations 2001 as amended set out the requirements for a planning application including notices, drawings and such other particulars, as are necessary to describe the works to which the application relates. It is considered that the submitted details inadequately describe the development proposed for retention and differ in material respects from the development as constructed, such that a full assessment of the proposal cannot be carried out. The Board is, therefore, precluded from granting permission for the proposed development.

11.0 Reasons and Considerations (2)

It is considered that the notwithstanding the proposed installation of the sound attenuation baffle board at the existing clay pigeon shooting grounds the removal of condition 6 would be premature, pending the provision of convincing evidence that continued use for clay pigeon shooting would not impact adversely on the amenities of the area, such that further monitoring is required.

12.0 Reasons and Considerations (3)

It is considered that the proposed installation of the sound attenuation baffle board at the existing clay pigeon shooting grounds would not impact adversely on the use of the facility or on the amenities of the area, would assist in the attenuation of sound generated from the use of the grounds for clay pigeon shooting, and would accordingly be in accordance with the proper planning and sustainable development of the area.

13.0 Conditions

1.	The development shall be carried out and completed in accordance with the plans and particulars lodged with the application except as may otherwise be required in order to comply with the following conditions.
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	<p>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>Reason: In the interest of clarity.</p>
2.	<p>The proposed development shall be carried out in accordance with the terms and conditions of the previous permission PI18.233084, PA Reg Ref 08/913.</p> <p>Reason: In the interests of orderly development and to safeguard the amenities of the area.</p>

Planning Inspector

9th December 2019

Appendices

Appendix 1 Photographs

Appendix 2 Monaghan County Development Plan 2019-2025, extract.