



An  
Bord  
Pleanála

## Inspector's Report ABP310325-21

<b>Development</b>	Construct a post and wire stockproof fence together with access gates.
<b>Location</b>	Tontanvally, Achill, County Mayo.
<b>Planning Authority</b>	Mayo County Council.
<b>Planning Authority Reg. Ref.</b>	20855.
<b>Applicant</b>	Stephen Roughton Smith.
<b>Type of Application</b>	Permission.
<b>Planning Authority Decision</b>	Grant.
<b>Type of Appeal</b>	Third Party -v- Grant.
<b>Appellants</b>	Development Applications Unit of the Department of Tourism, Culture Arts Gaeltacht, Sport and Media.
<b>Observers</b>	None.
<b>Date of Site Inspection</b>	27 <sup>th</sup> July, 2021 .
<b>Inspector</b>	Paul Caprani.

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## **1.0 Introduction**

ABP310325-21 relates to a third party appeal against the decision of Mayo County Council to issue notification to grant planning permission for a post and wire stockproof fence with two 3.65 metre wide access gates in an area of marginal grazing land in north-west Achill Island. The decision of Mayo County Council to grant planning permission was the subject of a third party appeal by the Development Applications Unit of the Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media. It is argued that the proposed development could affect the habitat of Machairs and affect the habitat of the Dunlin a species listed in Annex I of the EU Birds Directive.

## **2.0 Site Location and Description**

- 2.1. The appeal site comprises of marginal agricultural land at the northernmost peninsula of Achill Island in the townland of Tontanvally north and east of Lough Doo. A small narrow third class road runs in a north-westerly direction to the end of the peninsula. The site is located approximately 4 kilometres east of the small village of Doogort and is approximately 10 kilometres (as the crow flies) from the village of Keel, Achill Island. The lands of which the site forms part, comprise of low lying flat open marginal pastoral land and bogland. Lands further west of the subject site form part of the Caraun Point coastal area comprising of sand hills, sand dunes and beaches. The foot of the nearest sand dunes lie within 20 metres of the western boundary of the site.
- 2.2. The site itself comprises of a rectangular area of open bogland/marginal agricultural land located on the western side of the local access road traversing the peninsula. The south-eastern boundary of the subject site is located c.300 metres from the shores of Lough Doo to the south-east.

### **3.0 Proposed Development**

- 3.1. Planning permission is sought for the construction of a post and wire fence to enclose a rectangular portion of land to the immediate west of the access road. The area to be enclosed amounts to 2.6 hectares. The rectangular area of land has a depth of 250 metres and a width of approximately 100 metres. The fencing is to comprise of c.1.16 metre high timber fence posts set out 1.8 metres apart, plain galvanised wire fencing is to be attached to the post. A single galvanised gate is to provide access onto the road in question. The subject site is located within a designated Special Area of Conservation and Special Protection Area.

### **4.0 Planning Authority Decision**

Mayo County Council issued notification to grant planning permission subject to 1 single condition requiring the applicant to carry out the development in accordance with documentation submitted on 11<sup>th</sup> November, 2020.

The application was accompanied by a survey of rare bryophytes relating to the site. This survey was carried out by Mr. Rory Hood Consultant Ecologist. Details of the types of bryophytes encountered on the site are set out. It is stated that much of the western and central part of the field are suitable for some types of bryophytes. It is considered that if carried out sensitively, the erection of a fence around the field should not impact on the rare bryophytes presented. No populations of rare species were found within 10 metres of this field boundary. Once the fence is in place, it is important that an appropriate grazing regime is maintained. The erection of a fence could be beneficial for the rare bryophytes as if the fence were in place, it would be possible to regulate the intensity and duration of grazing within the site. The bryophytes are sensitive to both excessive grazing and undergrazing.

A preliminary flood risk assessment report determined that no further flood risk assessment was required in respect of the current application.

#### **4.1. Observation**

- 4.1.1. An observation was submitted by the Development Applications Unit of the Department of Tourism, Culture, Arts, Gaeltacht, Sport and the Media. The

Department is of the view that the fencing could affect habitats and species including Machairs a qualifying interest for the SAC and a priority habitat on Annex I of the EU Habitats Directive therefore the screening for appropriate assessment and appropriate assessment Stage 2, if required, should focus on the potential impact of the development on the site's conservation objectives.

- 4.1.2. On the basis of the observation received, the applicant was requested to carry out and submit an assessment under Article 6 of the EU Habitats Directive. A screening for appropriate assessment was submitted it concludes that the erection of a fence around the field should not negatively impact on the EU Habitats Directive or species or the nationally protected rare bryophytes present. No populations of rare species were found within 10 metres of the field boundary. So as long as care is taken not to trample or otherwise disturb the interior of the field while erecting the fence, there should be no impact from the act of erecting the fence itself. Once the field is in place it is important that an appropriate grazing regime is maintained. The creation of a fence could be beneficial to both the Machair habitat and rare bryophytes as the fence will enable regulation of the intensity and duration of grazing to keep livestock impacts to optimal levels. On the basis of the above conclusion, it is considered that a Stage 2 Appropriate Assessment is not required.
- 4.1.3. A further planning report prepared concludes that the proposed development by itself or in combination with other development in the vicinity, would not be likely to have a significant effect on European sites. On this basis it was recommended that planning permission be granted for the proposal.

## **5.0 Planning History**

There is no record of any planning history relating to the site.

## **6.0 Grounds of Appeal**

- 6.1. The decision of Mayo County Council to issue notification was the subject of a third party appeal by the Development Applications Unit of the Department of Tourism, Culture, Arts, Gaeltacht, Sport and the Media. The grounds of appeal are outlined below.

6.2. It is noted that the proposed development is situated within and in a location likely to significantly impact on the Doogort Machair/Lough Doo Special Area of Conservation and the Doogort Machair/Special Protection Area on the basis that the development could significantly

- affect the habitats Machairs a priority habitat, and
- affect the habitat of the Dunlin which is a species listed in Annex I of the EU Birds Directive.

6.3. The potential significant impacts would be caused by changes in the flora and fauna communities due to habitat fragmentation and changes in the grazing regime due to the creation of a separate fenced enclosure.

6.4. Changes in the Dunlin breeding habitat due to habitat fragmentation, and potential changes in the flora and fauna communities and the introduction of perching posts for avian predators.

6.5. It is considered that the appropriate assessment screening report and its assessment by the competent authority is inadequate and incomplete on the basis of the following:

- The impact arising from the proposal on the Dunlin has not been adequately considered in the appropriate assessment screening report. The area to be fenced was a former nesting habitat for breeding waders. Surveys undertaken in 1996 indicate that the principal wader breeding ground is on damp Machair to the north-west of Lough Doo. Even though Dunlin are not currently breeding on site, the conservation objective is to restore the favourable conservation condition of this bird species at this SPA. The proposed works could reduce the likelihood of the SPA being recolonised by the breeding Dunlin and this could have a significant adverse impact on the species.
- The effect on the Machair habitat has also not been adequately considered. The current grazing regime at the site is far from optimal and much of the site could be considered overgrazed and not being suitably managed. The construction of the fence will significantly alter the grazing regime of this area of the Machair. Any associated drainage works could significantly alter the hydrological regime. No grazing management plan has been submitted for the

enclosed area. Concentrated grazing within the enclosed area could cause irrevocable deterioration and damage to this habitat.

- 6.6. It is stated that the site in question is extremely sensitive. It is stated that there is an adequate and incomplete information in the appropriate assessment screening report to make a robust determination in relation to the need for appropriate assessment. The Department strongly believes that the potential may exist for significant adverse impacts on two European sites and that further scrutiny is required regarding the need for an appropriate assessment. Any appropriate assessment undertaking must establish and conclude that the proposed development does not pose a significant threat to the conservation objectives of Natura 2000 sites. It is imperative that the Board in accordance with the provisions of the Act must take appropriate steps to avoid any pollution and deterioration of habitats and any disturbances affecting birds insofar as these would be significant in relation to the objectives for the Natura 2000 sites. Case law has determined that any determination made by a competent authority cannot have lacunae and must contain complete, precise and definitive findings capable of removing all reasonable scientific doubt as to the effects of a project on a European site.

## **7.0 Appeal Responses**

### **7.1. Planning Authority's Response to the Grounds of Appeal**

- 7.1.1. Mayo County Council have not submitted a response to the grounds of appeal.

### **7.2. Applicant's Response to the Grounds of Appeal**

- 7.2.1. The applicant states that having acquired the field he became aware of the resident bryophyte population despite the severe overgrazing by cattle. The fencing is to be completed so as grazing could be managed and the bryophytes would be allowed to recover and thrive within the SAC. The applicant retained the services of an ecologist and leading expert on bryophytes in order to protect these rear rare plants. The applicant is trying to "do the right thing" for the environment and has been put to considerable trouble and expense.
- 7.2.2. It is noted that fields opposite the site and in the wider vicinity have been fenced for many years. The application currently before the Board seeks fencing fronting onto

the roadway and along the existing left hand side of the field (southern boundary). Therefore, the introduction of additional perching posts for avian predators would be minimal. Furthermore, due to severe overgrazing, the grass in the field is extremely short offering no habitat for ground nesting birds such as Dunlin.

- 7.2.3. It is not accepted that the impact of the fencing of the field on the Machair habitat has not been adequately addressed. The assessment carried out by the applicant's ecologist, a leading bryophyte expert, makes it clear that the bryophyte population in the field is suffering from severe overgrazing and would benefit from managed grazing. Increased cattle traffic through the field using it as a thoroughfare from the road to the unfenced parts of the SAC is substantially damaging this population. Without fencing, it is considered that the existing population will be entirely lost. The sole reason for this fencing is to encourage the bryophyte population. It cannot be reasonably argued that the fencing would result in a fragmentation of the habitat as there is existing fencing on two sides and a bog wall on the third side.
- 7.2.4. No drainage impacts will arise from the construction of the fence.
- 7.2.5. With regard to a grazing management plan, it is proposed to only graze the field with sheep between April and October using typically 10 to 20 sheep in the field from between 1 and 2 weeks per month. Flexibility in the plan is needed giving the extreme variability of Achill weather. Only sheep would be used because of the severe damage by cattle to the field and the potential impact on the bryophyte population. It is difficult to envisage an environment for bryophyte much worse than the current situation in the field giving the volume of cattle using the field as a main thoroughfare from the road through the open area of the SAC. The Board being the competent authority is required to take appropriate steps to avoid the deterioration of natural habitats which form the qualifying interests of European sites. On this basis the Board should approve the fencing as it would result in the protection of a bryophytes.

## **8.0 EIAR Screening Assessment**

- 8.1. The construction of a fence is not a class of development for which EIAR is required.



## 9.0 Planning Assessment

9.1. I have read the entire contents of the file, have had particular regard to the proposed development and the issues raised in the grounds of appeal. Having regard to the relatively minor nature of the proposed development, I consider that the Board can restrict its deliberations to the issues raised by the Development Applications Unit in the grounds of appeal, namely whether or not the proposed development has the potential to adversely impact on the integrity of the Natura 2000 sites in which it is located and this issue is evaluated in detail below.

9.2. The area in which it is proposed to locate the proposed fencing in order to create a field enclosure is located within the boundary of two Natura 2000 sites namely:

- The Doogort/Machair SPA (Site Code: 004235)
- The Doogort/Machair/Lough Doo (Site Code: 001497)

9.3. The qualifying interests associated with both Natura 2000 sites is set out below.

### 9.4. Doogort/Machair SPA

This SPA has a single qualifying interest - the Dunlin.

The site synopsis for this Natura 2000 sites notes that the site traditionally supported a breeding Dunlin population with 10 pairs since 1985. However, by 2009 no breeding Dunlin were recorded on the site. However, Dunlin have been recorded during the early stages of the breeding season in recent years. The Doogart/Machair SPA is of ornithological importance for its suitability as a breeding site for Dunlin. The conservation objective is to maintain or restore the favourable conservation condition of the bird species listed (i.e. Dunlin).

### 9.5. The Doogart/Machair/Lough Doo SAC has the qualifying interests

Machair (Priority Habitats) [21A0]

Petalophyllum Ralfsii (Petalwort) [1395]

9.5.1. The site synopsis notes that the Machair at this site occurs on two plains separated by an escarpment. One consists of a low wet hummocky plain near the sea while the other is higher, dryer and flatter and found further inland. This second plain grades into bogs. There are frequently a carpet of mosses and liverworts covering the sand

surface and a number of rare scarce species incurred including *campylopus subulatus*, *amblyodon dealbatus*, *haplomitrium hookeri* and *mastigophora woodsia*.

- 9.5.2. It notes that the Machair and Doogort is a largely unenclosed commonage used for grazing sheep and cattle. The correct level of grazing, evenly spread over the site, is a critical factor in maintaining species diversity and habitat quality of the Machair. A major threat to the Machair is agricultural improvement. The application of fertilisers can result in the loss of semi-natural vegetation and a reduction in species richness. Run-off of fertiliser can also cause pollution of associated freshwater systems. The Machair here is a good example of habitat type which is increasingly rare and receives priority status under the Annex I of the EU Habitats Directive. An outstanding feature of the site is its moss and liverwort flora, which includes a number of rarities included in the Annex II species. A number of oceanic species occur here which are rare in a European context.
- 9.5.3. The Natura 2000 standard data form contained on the NPWS website notes that the main habitat within the site is the Machair grassland (both dry and damp) with small areas of sandy beach, rocky shingle shore, lake and freshwater marsh. Grazing and recreational activities are the main land uses within the site and the surrounding areas. Unlike many areas of Machair in County Mayo, the site has not been damaged by the subdivision and subsequent fencing of land.
- 9.5.4. The site is primarily of interest because of the presence of Machair, a priority Annex I habitat. The condition and diversity of this habitat is good, especially when compared with other sites in County Mayo. A small population of Annex II liverwort *petalophyllum ralfsii* occurs within the Machair. The site is also important for a large number of nationally rare or scarce bryophyte species which includes *leiocolea gillmanii* (the only Irish site), *pohlia walhenbergii*, *catoscopium nigrum* and *fossombronia incurva*. The site also supports breeding *vanellus vanellus* and *calidris alpina* the latter is a red data book species.
- 9.5.5. The form indicates that currently there is no management plan for the site.
- 9.5.6. Details of the conservation objectives for the site indicate that the enclosure of land in question is located within the designated area of land for Machairs within the SAC. The conservation objective map also indicates that the location of the petalwort species is located outside the subject site to the south-western area of the SAC.

- 9.5.7. The Board will note that from the presentation of the entirety of the above information there is somewhat conflicting impacts arising from the proposed fencing of lands. It is clear from the applicant's response to the grounds of appeal that the rationale behind the proposal to fence the land in question is to manage and restrict the levels of grazing in order to protect the species of bryophyte that occur on the lands in question. It is also clear from the appellants' grounds of appeal that overgrazing presents a threat to the habitats associated with the SAC. From this point of view the provision of fencing can be seen as a beneficial intervention in terms of protecting biodiversity.
- 9.5.8. A detailed survey of the field in question submitted with the application identified a total of three populations of *catocopium nigratum* and possibly a population of *leiocolea gillmanii*, the latter type of bryophyte being extremely rare in Ireland. No suitable habitat for petalwort (*petalophyllum ralfsii*) was found. This appears to tally with the information contained in the Conservation Objectors Report prepared by the Department where the only areas of habitat for this species were found to the south-west of the subject site.
- 9.5.9. The subject site also lies within the lands associated with the formation of Machair surfaces. The Natura 2000 data form contained on the NPWS website notes that unlike other areas of Machair in County Mayo "*the site has not been damaged by the subdivision and subsequent fencing of land*".
- 9.5.10. It is clear therefore that the imposition of fencing presents a threat to the integrity of this priority habitat and could result in the fragmentation of the said habitat. I would also agree with the appellants' contention in the grounds of appeal that the screening report did not fully investigate the ramifications of this impact on the Machair priority habitat.
- 9.5.11. In terms of the impact of the proposal on the Dunlin, it is again clear from NPWS research referred to in the site synopsis report on the website that (a) the population of Dunlin has declined in recent decades and (b) Dunlin have been recorded on site during the early stages of the breeding season in recent years indicating its potential as a breeding resource for this scarce breeding bird his national population had declined in recent years. The NPWS identified the provision of additional fencing posts (perching posts) would present a threat from avian predators. This point in my

view is particularly pertinent having regard to the site's potential as a breeding resource for Dunlin.

- 9.5.12. Thus, while the argument that the fencing of the lands in question will protect bryophytes through the management of grazing is not in dispute, the surveys undertaken indicate that the only bryophytes that form part of the qualifying interest of the SAC – the petalwort (*petalophyllum ralfsii*) is not located within the lands to be enclosed. Therefore, the proposed enclosure would not protect the species of bryophyte which constitutes a qualifying interest associated with the SAC. It is fully acknowledged that the proper management of grazing the enclosed field, can if managed correctly, protect bryophyte species of national importance notwithstanding the fact that these species do not form part of the qualifying interests associated with the SAC.
- 9.5.13. On the other hand the provision of fencing of the subject site would introduce the additional land enclosures in an area which heretofore on the whole has not been damaged by the subdivision and subsequent fencing of the land. This in my view is particularly important having regard to the Machair status as a priority habitat. Furthermore, the introduction of additional perching posts for avian predators could also pose a significant threat to the Dunlin during the early stages of the breeding season. This is particularly important as the national population of Dunlin has declined in recent years.
- 9.5.14. In conclusion therefore it is my considered opinion that the proposed fencing could lead to the deterioration of both habitats and species which form part of the qualifying interests associated with both Natura 2000 sites in question. As such it cannot be excluded on the basis of objective information that the proposed development would not impact on the integrity of both the Doogort/Machair/Lough Doo SAC and the Doogort/Machair SPA.

## 10.0 Recommendation

- 10.1.1. On the basis of the above, I consider that the Board should refuse planning permission for the proposed development based on the reasons and considerations set out below.

## 11.0 Reasons and Considerations

On the basis of the information provided with the application and appeal, and in light of the assessment carried out above, the Board is not satisfied that the proposed development individually, or in combination with other plans and projects would not adversely affect the integrity of the Doogort/Machair SPA (Site Code: 004235) and the Doogort/Machair/Lough Doo SAC (Site Code: 001497). This conclusion is based on concerns that the proposed fencing would be located within a Machair habitat, which is one of the few remaining Machair habitats non affected by fence enclosure and the proposed fencing could damage the said habitat which is a priority habitat under the Habitats Directive and a qualifying interest of the Doogort/Machair/Lough Doo Special Area of Conservation (Site Code: 001497). Furthermore, it is considered that the introduction of additional fencing posts could provide perching posts for avian predators which would pose a significant threat to the Dunlin breeding habitat which is the sole species of conservation interests associated with the Doogort/Machair Special Protection Area (Site Code: 004235). The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

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Paul Caprani,  
Senior Planning Inspector.

27th October, 2021.