



An
Bord
Pleanála

Inspector's Report

ABP-312903-22

Development	Erection of an accessible timber boardwalk, viewing area
Location	Kinletter & Trusk, Ballybofey, Lifford PO, Co. Donegal
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	2152444
Applicant(s)	Ballybofey and Stranorlar Integrated Community Company (BASICC).
Type of Application	Permission.
Planning Authority Decision	Grant permission
Type of Appeal	Third Party
Appellant(s)	John Conaghan and Others.
Observer(s)	None.
Date of Site Inspection	25 th July 2022.
Inspector	Barry O'Donnell

1.0 Site Location and Description

- 1.1. The subject site has a stated area of 1.48ha and is located in the townland of Kinletter and Trusk, in a rural location, c.5km south of Ballybofey. The site encompasses the area immediately north of the shore of Trusk Lough. The Lough is accessed from the L2974 and there is an informal parking/viewing area in the area adjacent to its north-east corner.
- 1.2. The subject site consists of primarily unmaintained grassland and vegetation but contains an informal walking track that routes from the area of the car park to the opposite (north) side of the Lough.

2.0 Proposed Development

- 2.1. The proposed development entailed within the public notices comprises the development of an accessible timber boardwalk, viewing area and associated site works over an existing stone covered walking trail.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority granted permission on 3rd February 2022, subject to 4 No. conditions.

3.2. Planning Authority Reports

- 3.2.1. A planning report dated 1st February 2022 has been provided, which reflects the decision to grant permission. The report states that the development is acceptable, in view of the presence of an existing walkway at this location and is support provided by development plan policy NH-P-12 for enhanced accessibility to the walkway. The report recommends that permission be granted, subject to 4 no. recommended conditions which are consistent with those attached to the Planning Authority's decision.
- 3.2.2. Other Technical Reports

A **Roads Department** report dated 17th January 2022 has been provided, which outlines no objection, subject to recommended conditions.

A **Building Control Department** report dated 12th December 2021 has been provided, which recommends attachment of a standard condition as part of a grant of permission.

3.3. **Prescribed Bodies**

- 3.3.1. Irish Water made a submission on 5th January 2021, stating that a water connection is not required.

3.4. **Third Party Observations**

- 3.4.1. A single submission was received on the application, the issues raised within which can be summarised as follows: -
- Absence of consultation with local community.
 - Impact on biodiversity.
 - Impact on heritage of the area.
 - Impact on enjoyment of the lake.

4.0 **Planning History**

- 4.1.1. I did not encounter any previous planning records pertaining to the site in my review of available records.
- 4.1.2. The Planning Authority report states that a Section 5 application (Reg. Ref. S5 21/33) was submitted in respect of this development and a determination was made that it constitutes works, which are not exempted development.
- 4.1.3. The Planning Authority report also states that an unauthorised development investigation (Ref. UDSR 10/08) also took place regarding the construction of a stone footpath, following which a recommendation was made that an Enforcement Notice be served.

5.0 Policy Context

5.1. Donegal County Development Plan 2018-2024

5.1.1. The site is in a rural, unzoned part of County Donegal.

5.1.2. According to Map 7.1.1 'Scenic Amenity' the site is located in an area of 'High Scenic Amenity'. Section 7.1.1 of the development plan discusses landscape designations. For areas of High Scenic Amenity states that these areas *'are landscapes of significant aesthetic, cultural, heritage and environmental quality that are unique to their locality and are a fundamental element of the landscape and identity of County Donegal. These areas have the capacity to absorb sensitively located development of scale, design and use that will enable assimilation into the receiving landscape and which does not detract from the quality of the landscape, subject to compliance with all other objectives and policies of the plan.'*

5.1.3. Policy NH-P-7 is relevant to the development, stating: -

NH-P-7: Within areas of 'High Scenic Amenity' (HSC) and 'Moderate Scenic Amenity' (MSC) as identified on Map 7.1.1: 'Scenic Amenity', and subject to the other objectives and policies of this Plan, it is the policy of the Council to facilitate development of a nature, location and scale that allows the development to integrate within and reflect the character and amenity designation of the landscape.

5.1.4. Other relevant policies and objectives include: -

NH-O-5: To protect, manage and conserve the character, quality and value of the landscape having regard to the proper planning and development of the area, including consideration of the scenic amenity designations of this plan, the preservation of views and prospects and the amenities of places and features of natural, cultural, social or historic interest.

NH-P-12: It is a policy of the Council to protect the integrity of the Shore Walks from Moville to Greencastle, Bundoran to Tullaghan, Buncrana to Stragill and the walkway encircling Trusk Lough and Ballybofey by the management of development that would intrude upon or inhibit the amenities of those walks and surrounding areas.

NH-P-13: It is a policy of the Council to protect, conserve and manage landscapes having regard to the nature of the proposed development and the degree to which it

can be accommodated into the receiving landscape. In this regard the proposal must be considered in the context of the landscape classifications, and views and prospects contained within this Plan and as illustrated on Map 7.1.1: 'Scenic Amenity'.

NH-P-17: It is a policy of the Council to seek to preserve the views and prospects of special amenity value and interest, in particular, views between public roads and the sea, lakes and rivers. In this regard, development proposals situated on lands between the road and the sea, lakes or rivers shall be considered on the basis of the following criteria:

- Importance value of the view in question.
- Whether the integrity of the view has been affected to date by existing development.
- Whether the development would intrude significantly on the view.
- Whether the development would materially alter the view.

In operating the policy, a reasonable and balanced approach shall be implemented so as to ensure that the policy does not act as a blanket ban on developments between the road and the sea, lakes and rivers.

5.2. Natural Heritage Designations

- 5.2.1. The subject site is not located with or adjacent to any designated European site, the closest such site being the River Finn SAC (Site Code 002301), which is approx. 3.2km.
- 5.2.2. Meenagarranroe Bog NHA (Site Code 002437) lies to the west, approx. 3.4km from the site.

5.3. EIA Screening

- 5.3.1. The subject development constitutes smallscale development, with minimal interference to existing conditions on the site. This type of development does not constitute an EIA project and so the question as to whether or not it might be sub-threshold does not arise.

6.0 The Appeal

6.1. Grounds of Appeal

- The proposed development is not adequately justified. It is proposed only because funding has been obtained for it.
- The structure will deteriorate quickly in the local environment.
- The proposal is ill-conceived and does not represent proper planning and sustainable development.
- The proposed route runs alongside deep water and there is a safety risk.
- The development will detract from the character of a man-made dam, which is a feature in the landscape.
- The development will impact on flora and fauna, which is abundant on the site and includes endangered species.
- Trusk Lough is tidal and its level rises during winter, so the development will be prone to flooding.
- Absence of stakeholder/community consultation.
 - Public and stakeholder consultation is a key factor in the sustainable management of visitor attractions and the future of this site is threatened without proper management and consultation.
 - The application did not involve stakeholder engagement in meaningful way.

6.2. Applicant Response

6.2.1. None received.

6.3. Planning Authority Response

6.3.1. None received.

6.4. Observations

6.4.1. None.

7.0 Assessment

7.1. Having inspected the site and considered the contents of the appeal in detail, I consider the main planning issues to be considered are:

- Principle of development;
- Impact on surrounding area;
- Other issues; and
- Appropriate assessment.

7.2. Principle of Development

7.2.1. The subject site is located in a rural area designated by the development plan as an area of 'High Scenic Amenity'. Section 7.1.1 of the development plan states that these areas have the capacity to absorb sensitively located development of scale, design and use that will enable assimilation into the receiving landscape and which does not detract from the quality of the landscape, subject to compliance with all other objectives and policies of the plan.

7.2.2. Policy NH-P-12 also directly references the walkway at Trusk Lough, stating that it is a policy to protect its integrity, by the management of development that would intrude upon or inhibit the amenity of the walkway.

7.2.3. I am satisfied that the proposed development is consistent with the provisions of the development, subject to consideration of its impact on the surrounding area and drainage. These issues are considered in detail in the following sections.

7.3. Impact on Surrounding Area

7.3.1. The appellant submits that the proposal has not been justified and will detract from the character of a man-made dam, which is a feature in the landscape.

7.3.2. There is an existing informal grass walking track in the same broad area as the proposal, which wraps around the north and west sides of the Lough. At the time of my inspection the track was waterlogged in parts and was enclosed in parts by vegetation.

7.3.3. In my view, the proposed track, which would be raised 150mm off the ground and would terminate a 10m x 6m viewing deck, would have no material impact on the

character of the area. It may be visible in close range views from the immediate vicinity of the site, but it will not be an incongruous or alien addition to the site. Moreover, any limited visual impact is outweighed by the benefit the track would provide to users, by providing a safe, year-round walking route and vantage point for bird watching.

- 7.3.4. I also disagree that the proposal involves any risk to public safety. The route is set back from the lake and the Board will note that it follows the same route as the existing formal route, so I do not see that there is any basis for claims of an increased risk to public safety.
- 7.3.5. The appellant expresses concern that the development will impact on flora and fauna in its vicinity, which is stated to be abundant and includes endangered species. No ecological assessment was submitted with the application and no evidence of the presence of protected or endangered species. Notwithstanding this, in my opinion, the installation of the proposed walking track will have at most a minor impact on species/habitats occurring on the site. The land-take for the track is a very small proportion of the overall site and it occupies the same broad area as the existing informal route which is itself likely to give rise to infrequent disturbance as users walk along the route.
- 7.3.6. Regarding concerns over maintenance, I am satisfied that subject to use of appropriate durable materials, the route would have a long-term function. I do not consider concerns in this regard constitute a justifiable basis for a refusal of permission.

7.4. Other Issues

- 7.4.1. With reference to concerns over flooding, it is my view that whilst increases in the level of the lake may inundate the walking route from time to time (and the Board will note that no evidence has been provided to this effect), the proposal itself represents an effective and considerate means of formalising the existing walking route. Given its design and small on-the-ground extent, it will not affect the existing high-water mark of the lake and will not increase the risk of flooding elsewhere in the area.
- 7.4.2. Regarding concerns over a lack of public consultation, whilst I note the appellant's submission this is not a factor to be considered by the Board as part of its decision. The requirement for public consultation as part of a planning application is set out in

the legislation and the Planning Authority, which is responsible for validation of the applicant and management of the public consultation phase, deemed the application to be valid.

7.5. **Appropriate Assessment**

Appropriate Assessment Screening

Compliance with Article 6(3) of the Habitats Directive

- 7.5.1. The requirements of Article 6(3) as related to screening the need for appropriate assessment of a project under part XAB, section 177U of the Planning and Development Act 2000 (as amended) are considered fully in this section.

Background on the Application

- 7.5.2. A screening report for Appropriate Assessment was not submitted with this appeal case. Therefore, this screening assessment has been carried de-novo.

Screening for Appropriate Assessment- Test of likely significant effects

- 7.5.3. The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development is likely to have significant effects on a European site(s).
- 7.5.4. The proposed development is examined in relation to any possible interaction with European sites designated Special Conservation Areas (SAC) and Special Protection Areas (SPA) to assess whether it may give rise to significant effects on any European Site.

Brief description of the development

- 7.5.5. The development is described at Section 2 of this Report. In summary, permission is sought for the development of an accessible timber boardwalk, viewing area and associated site works. The walking route is proposed to be located over an existing informal track, which wraps around the north and west sides of the Lough and would be suspended above the ground by 150mm, with the boardwalk supported by a series of insert posts inserted in pairs at a max distance of 2.7m centre to centre and with a maximum ground penetration of 400mm.

Submissions and Observations

7.5.6. The submissions from the appellant, applicant and Planning Authority are summarised as Section 6 of my Report.

European Sites

7.5.7. The River Finn SAC (Site Code 002301) is the only European site within a 5km search zone of this smallscale development. It is closest to the site to the south-west, where it encroaches to within c.3.2km. The designated area of the SAC also encroaches to within c.4.2km to the north.

7.5.8. There are a number of other European sites within a 15km search zone but I am satisfied that there is no possibility of significant effects arising other than for sites in close proximity to the site

Evaluation of potential significant effects

7.5.9. The proposed development is a smallscale development which involves minimal ground clearance/excavation. Available EPA drainage mapping indicates that surface waters in the area drain to the north, toward the River Finn SAC. The site is over 4km from the SAC, which I consider is adequate to ensure there is no real likelihood of suspended solids or pollutants being transferred from the subject site.

Screening Determination

7.5.10. The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended. Having carried out Screening for Appropriate Assessment of the project, it has been concluded that the project individually or in combination with other plans or projects would not be likely to give rise to significant effects for any other European site, in view of the site's Conservation Objectives, and Appropriate Assessment (and submission of a NIS) is not therefore required.

7.5.11. This determination is based on the following:

- The separation distance between the subject site and European site within the zone of potential influence.
- The smallscale nature of the development.

8.0 Recommendation

8.1. I recommend that permission for the proposed development be granted, subject to conditions as set out below.

9.0 Reasons and Considerations

Having regard to the nature and scale of the development proposed, together with policy support provided by policy NH-P-12 of the Donegal County Development Plan 2018-2024, it is considered that the proposal is in keeping with the proper planning and sustainable development of the area, would not have any detrimental impact on the rural character of the area, would not pose any risk to public safety and would not present any increased risk of flooding elsewhere in the area

10.0 Conditions

1.	<p>The development shall be carried out in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority 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 construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures and off-site disposal of construction/demolition waste.</p> <p>Reason: In the interests of public safety and to protect the ecological potential of the site.</p>

Barry O'Donnell
Planning Inspector

21st September 2022.