



An
Bord
Pleanála

Inspector's Report ABP-313354-22

Nature of Application	Application for confirmation of Donegal County Council Compulsory Purchase (Stranorlar Multi Use Sports Facility Improvement Project) Order 2022
Location	Millbrae, Stranorlar, Co. Donegal.
Planning Authority	Donegal County Council
Applicant	Donegal County Council
Objectors	Maureen McNulty Declan Doherty
Date of Site Inspection	6 th November 2022
Inspector	Sarah Lynch

1.0 Introduction

1.1. Overview

- 1.1.1. This is an application by Donegal County Council for confirmation by the Board of a Compulsory Purchase Order ('CPO'), entitled Donegal County Council Compulsory Purchase (Stranorlar Multi Use Sports Facility Improvement Project) Order, 2022.
- 1.1.2. The Compulsory Purchase Order relates to the compulsory acquisition of rights over land in the townland of Millbrae, Stranorlar Co. Donegal and it is made pursuant to the powers conferred on Donegal County Council under Section 216 of the Planning and Development Act 2000 as amended.
- 1.1.3. 2 objections to the CPO have been received and given the nature of these objections the Board determined on the 24th January 2023 that an Oral Hearing was not required. Further comments were sought from both objectors to be received by the 22nd March 2023. All submissions are detailed and considered within this report.

1.2. Purpose of CPO

- 1.2.1. The purpose of the CPO is to facilitate improvement works to an existing multi-use sports facility known as the Finn Valley Centre at Millbrae Stranorlar Co. Donegal which would comprise of:
 - the upgrading of an extension to an existing grass playing pitch to develop a Synthetic Multi Sport All weather pitch and associated works including floodlighting, site and pitch fencing, all stop netting, site drainage, landscaping, the forming of a flood protection berm and provision of a perimeter grass walking/running track on top of the berm. The proposal will also involve the relocation of an existing underground 10kV cable and connection to an existing on site ESB substation.
- 1.2.2. Donegal County Council seeks to acquire lands from 6 landowners as well as lands currently owned by Donegal County Council which are not included in the Compulsory Purchase Order.

1.3. Accompanying documents

- 1.3.1. The application was accompanied by the following:
 - Compulsory Purchase Order and Schedule thereto, dated 13th April 2022.

- CPO Maps.
- Newspaper notice, published in the Donegal News on the 14th April 2022.
- Copy of notice sent to landowners
- Certificate of service of CPO notices.

1.4. **Format of CPO and Schedule**

- 1.4.1. The CPO states that in order to complete the scheme it is necessary to acquire lands from 6 landowners. The list of reputed landowners with associated land-take is detailed in ‘Schedule Parts I Land to be permanently acquired’, Part 2 Land to be temporarily acquired’ and Part 3 Permanent Wayleave. Temporary land takes are required to facilitate construction of the proposed scheme.
- 1.4.2. The lands described in the Schedule are stated to be lands other than land consisting of a house or houses unfit for human habitation and not capable of being rendered fit for human habitation at reasonable expense.
- 1.4.3. Schedule Part I Land to be Permanently acquired and Part 2 Land to be Temporarily acquired assigns an identification number to each plot of land and describes the quantity, type, townland, owner or reputed owner, lessee or reputed lessee and occupier of each plot, as relevant.

2.0 **Site Location and Description**

- 2.1. The proposed development will be located to the south of the existing multi-sport facility at Millbrae Stranorlar. The development is located within a grassed area which is currently used as playing pitches and will also include part of the existing car parking area and access routes around the existing Sports facility. The lands are located at the edge of the town centre and are relatively flat in terms of topography. The site abuts the banks of the River Finn to the south and is partially located within the boundary of the SAC. The lands comprise amenity grassland, hardstanding hedgerows, wet grassland and treelines. The site is accessed via an existing access from the Millbrae Road to the east.
- 2.2. As noted above the CPO relates to lands in a single townland of Millbrae in Stranorlar Co. Donegal.

3.0 Planning History

3.1. A 177AE consent for the proposed works has been applied for separately Ref ABP 312985-22.

3.2. Other relevant history

- 2251228 Permission was granted for the installation of Solar Panels onto roof of athletic club and leisure club.
- 1850302 Retention Permission was granted for a storage building for sports and athletics equipment and permission was granted for construction of an extension to the rear of the building to facilitate changing rooms.
- 1250105 Permission was granted for a first-floor extension to the sports facility

Lands to south of site:

- ABP 304662 – Permission was granted for dredging of material for flood relief works along the River Finn.

4.0 Policy Context

4.1. Donegal County Development Plan 2018-2024

4.2. The provision of high quality social and community infrastructure and services such as sports and recreation facilities, walking and cycling routes, parks, public spaces, playgrounds, community resource centres, schools, childcare services and healthcare facilities is crucial to the creation of sustainable communities and in turn a high quality of life. The Council will collaborate with public, private and community organisations in the provision of such infrastructure and services and will directly provide new and maintain existing physical social and community infrastructure such as parks, playgrounds, and public spaces including through inter alia the Council's playground programme, and the Town and Village renewal scheme.

4.3. **CCG-P-4:** It is a policy of the Council that any development proposal for social, community or cultural use (e.g. healthcare facilities sheltered housing facilities, nursing homes, residential care homes, sports/recreational facilities, playgrounds, community resource centres, education facilities, libraries, museums, galleries etc.), in addition to other policy provisions of this Plan, shall be required to meet the following criteria

- (a) It is compatible with surrounding land uses existing or approved
- (b) It will not have a significant impact on adjacent residential amenities.
- (c) There is existing or imminent programmed capacity in the public water waste infrastructure for developments within urban areas or suitable on-site effluent treatment facilities to EPA standards can be provided in rural areas. (d) It does not cause a traffic hazard and the existing road network can safely handle any extra vehicular traffic generated by the proposed development.
- (e) Adequate parking provision, access arrangements, manoeuvring and servicing areas are provided in line with technical standards and policies of this Plan.
- (f) The layout of the development provides for a high level of, and prioritises, pedestrian permeability and access.
- (g) It does not create a noise nuisance and will not cause any significant environmental emissions.
- (h) The location, siting, and design of the development including associated infrastructure and landscaping arrangements is of a high quality and does not have an adverse impact on the host landscape, rural character, or visual amenities of the area (for developments in rural areas), does not have an adverse impact on/successfully integrates with the streetscape, vernacular character or built environment of the area (for developments in urban areas).
- (i) Appropriate boundary treatment and means of enclosure are provided and any areas of outside storage proposed are adequately screened from public view;
- (j) It does not have an adverse impact on the built, scenic, or natural heritage of the area including structures on the RPS/NIAH and Natura 2000 sites;
- (k) It is not located in an area at flood risk and/or will not cause or exacerbate flooding;
- (l) It does not compromise the water quality of water bodies with River Basin Districts designed under the Water Framework Directive or hinder the programme of measures contained within any associated River Basin Management Plan.

4.4. **Seven Strategic Towns Local Area Plan 2018-2024**

4.5. **Policy SO2:** To enhance and develop Ballybofey-Stranorlar by 2024 so as to enhance its reputation as a sporting centre of excellence and as a key centre of recreation and hospitality for the County. In addition, the Twin Towns will have an enhanced reputation also as an attractive place to live and work on foot of expanded residential and retail facilities and on foot also of strategic infrastructural improvements to the town.

4.6. The proposed development lands are zoned within the plan for leisure, sport and recreation uses and lands adjacent to the river are identified for open space and recreation uses. The following is relevant to the development site:

Policy BS-TR-3: It is a policy of the Council to consider development proposals within Masterplan Area 1: Railway Road/Finn Valley Complex Lands where they would comply with the following policy framework:

3. Leisure Centre Site: The Leisure Complex and all-weather football pitches have marked the already successful development of this area. Any further expansion and development of sporting, recreational and community uses within this area shall be encouraged and supported. Future development within this area should have particular regard to and address car parking, adjoining vehicular and pedestrian/cycle routes and afford a degree of latent surveillance.

5. Sporting, leisure and recreational site Sporting, leisure and recreational uses only, shall be supported and encouraged at this location. Any application shall make provision for the retention of existing vegetation and mature trees particularly along the southern and eastern boundaries. Particular regard must be had along the interface with the SAC lands to the South and East and the Public Recreation Area to the west of the site. The proposed new road along the north of the site is an important linkage throughout the masterplan area and as such treatment along this boundary should be innovative and of a high quality whilst also offering a degree of latent surveillance. Given the encroachment of the River Finn flood zone into this area, proposals shall not comprise housed or occupied structures. These lands may be used in part to accommodate public utilities or facilities ancillary to the general sport and recreational use on adjoining lands.

4.7. **Implementing the National Flood Risk Policy 2018**

Ballybofey / Stanorlar is identified as a relief scheme that is planned.

4.8. **Ballybofey/Stranorlar Regeneration Strategy**

The proposed multi-sport facility has been secured under the Shared Spaces theme of the Peace IV Programme for the development of a future all weather multi-sport facility in Stranorlar. Donegal County Council will also be providing match funding in respect of this project which will be the first of this scale in the County.

5.0 **Objections**

5.1. 2 objections were received from landowners.

5.2. **Grounds of objection**

1. Maureen Fogarty – Plots 6A & 6B

- The acquirement of Plot 6A is acceptable as it is required to facilitate the proposed development.
- The acquisition of Plot 6B is considered to be excessive and is not required to facilitate the proposed development. It is requested that this plot is removed from the CPO.
- Concerns are raised in relation to the provision of adequate drainage
- Clarification is sought in relation to the provision of an access route to the retained landholding.

2. Declan Doherty – Plots 07A & 07B

- The Environmental Impact Assessment is inadequate and contrary to EU Law.
- The proposed development does not take account of the decision of the European Court of Justice decision 258/11 CJEU in relation to Galway Outer Bypass.
- Description of development is misleading.

6.0 Assessment

6.1. Overview

6.1.1. For the Board to confirm the subject CPO, it must be satisfied that Donegal County Council has demonstrated that the CPO “is clearly justified by the common good”¹. Legal commentators² have stated that this phrase requires the following minimum criteria to be satisfied:

- There is a community need that is to be met by the acquisition of the site in question,
- The particular site is suitable to meet that community need,
- Any alternative methods of meeting the community needs have been considered but are not demonstrably preferable, and
- The works to be carried out should accord with or at least not be in material contravention of the provisions of the statutory development plan.

6.1.2. In the interest of clarify it is of note that Section 213 of the Planning and Development Act 2000, as amended, sets out the legal status of the compulsory purchase process in relation to Local Authorities, as follows:

(1) The power conferred on a local authority under any enactment to acquire land shall be construed in accordance with this section.

(2) (a) A local authority may, for the purposes of performing any of its functions (whether conferred by or under this Act, or any other enactment passed before or after the passing of this Act), including giving effect to or facilitating the implementation of its development plan or its housing strategy under section 94, do all or any of the following:

- (i) acquire land, permanently or temporarily, by agreement or compulsorily,

¹ Para. 52 of judgement of Geoghegan J in *Clinton v An Bord Pleanála* (No. 2) [2007] 4 IR 701.

² Pg. 127 of *Compulsory Purchase and Compensation in Ireland: Law and Practice*, Second Edition, by James Macken, Eamon Galligan, and Michael McGrath. Published by Bloomsbury Professional (West Sussex and Dublin, 2013).

(ii) acquire, permanently or temporarily, by agreement or compulsorily, any easement, way-leave, water-right or other right over or in respect of any land or water or any substratum of land,

(iii) restrict or otherwise interfere with, permanently or temporarily, by agreement or compulsorily, any easement, way-leave, water-right or other right over or in respect of any land or water or any substratum of land, and the performance of all or any of the functions referred to in subparagraphs (i), (ii) and (iii) are referred to in this Act as an “acquisition of land”.

(b) A reference in paragraph (a) to acquisition by agreement shall include acquisition by way of purchase, lease, exchange or otherwise.

(c) The functions conferred on a local authority by paragraph (a) may be performed in relation to— (i) land, or (ii) any easement, way-leave, water-right or other right to which that paragraph applies, whether situated or exercisable, as the case may be, inside or outside the functional area of the local authority concerned.

(3) (a) The acquisition may be effected by agreement or compulsorily in respect of land not immediately required for a particular purpose if, in the opinion of the local authority, the land will be required by the authority for that purpose in the future.

(b) The acquisition may be effected by agreement in respect of any land which, in the opinion of the local authority, it will require in the future for the purposes of any of its functions notwithstanding that the authority has not determined the manner in which or the purpose for which it will use the land. (c) Paragraphs (a) and (b) shall apply and have effect in relation to any power to acquire land conferred on a local authority by virtue of this Act or any other enactment whether enacted before or after this Act.

(4) A local authority may be authorised by compulsory purchase order to acquire land for any of the purposes referred to in subsection (2) of this section and section 10 (as amended by section 86 of the Housing Act, 1966) of the Local Government (No. 2) Act, 1960, shall be construed so as to apply

accordingly and the reference to “purposes” in section 10(1)(a) of that Act shall be construed as including purposes referred to in subsection (2) of this section.

6.1.3. I will therefore address each of the four criteria outlined above in turn below, together with the issue of proportionality and other issues arising from the objection.

6.2. **Community Need**

6.2.1. Community need was set out by Donegal County Council within the documentation submitted with the CPO and can be summarised as follows:

- The proposed works are located at the site of an existing community sports facility which has been the recipient of cross border funding.
- The proposed development which is to be further funded via the same cross border mechanism will provide additional community sports facilities in the form of a Synthetic Multi Sport All weather pitch and associated works including floodlighting, site and pitch fencing, all stop netting, site drainage, landscaping, the forming of a flood protection berm and provision of a perimeter grass walking/running track on top of the berm.
- The scheme will also provide for improved flood protection of the sports facilities in the form of a flood berm and will ensure the continued use of these facilities in time of heavy rainfall.

6.2.2. Benefits of the scheme include the following:

- Provision of improved and additional sports and recreation facilities for Stranorlar and surrounding area.
- The provision of improved flood protection for sports facilities.
- Improved drainage system for existing and proposed development.

6.2.3. I note that the objectors did not challenge the fundamental community need outlined by the Council and that in the case of Maureen McNulty, concerns primarily relate the need for an additional section of land, access and any impact to remaining lands. In the case of Declan Doherty concerns relate to EIA, European Law and accuracy of the description of the development.

6.2.4. Having reviewed the information submitted, I am satisfied that there is a clear need for improvements to the Sports facilities provided within the Finn Valley Sports Centre and given the proximity of the proposed and existing infrastructure to the River Finn

Flood zone A, there is a clear need for improved flood protection of the proposed and existing sports facilities at the Centre.

- 6.2.5. I am therefore satisfied that Donegal County Council has demonstrated a clear and pressing community need that would be met by the project that would be facilitated by the acquisition of rights over the lands in question, should the Board confirm the CPO.

6.3. **Suitability of Lands**

- 6.3.1. At the outset, the Board will note that Donegal County Council are seeking to both permanently and temporarily acquire lands.
- 6.3.2. The lands that are the subject of this CPO are currently used for a number of uses including playing pitches, car parking, hard standing, grassland and drainage ditches.
- 6.3.3. The lands are located directly adjacent to the River Finn SAC which is one of Ireland's premier salmon waters. A number of salmon redds have been identified within the River Finn near to the proposed development boundary at Dreenan Bridge. Similarly, otter are known to frequent the banks of the River Finn, and crouching areas have been identified within the surround area.
- 6.3.4. It is important to note at this juncture that a NIS and Ecological Impact Assessment Report have been prepared in relation to the proposed development and accompany the 177AE application ABP Ref 312985-22 for the proposed development, which considers all potential impacts to the River Finn SAC and surrounding environment. The consideration of the suitability of lands for the purpose of this CPO relates to the compatibility of the lands with the proposed use in the context of surrounding uses and land typology. The lands, which are relatively flat in terms of topography, located within the development boundary of Starnorlar town, adjacent to an existing school and containing an existing sports facility are considered to be suitable to facilitate the proposed development for which the CPO is sought.
- 6.3.5. With regard to land use zoning objectives, I have addressed this in Section 6.7 below, however in brief I consider that the proposed works would be acceptable within the appropriately zoned lands affected by the CPO.
- 6.3.6. I note that Maureen McNulty has raised concerns in relation to the need for plot 6B to be included within the CPO as this area will not be required to facilitate the proposed development. In response to this concern Donegal County Council has stated that

these lands are required as 'replacement lands' to accommodate the land use, that is currently occupying the site of the proposed all weather pitch and walking track. From site inspection and as seen from the photographs accompanying this report, it is clear that the lands are currently used as a grass football pitch. Whilst I acknowledge the objector's concerns in this regard, I consider it reasonable, given the current and proposed uses at the site, to relocate the football pitch to lands within Plot 6B.

6.3.7. Thus, I consider that the lands contained within the CPO at this location are necessary to facilitate the proposed works.

6.3.8. Having regard to the nature of the proposed works and noting the restrictions on options available to the Council for the development of additional sports facilities within this site, I am satisfied that the lands that are the subject of the CPO are suitable to meet the aforementioned community need.

6.4. Accordance with the Development Plan

6.4.1. As outlined in Section 4.1 above, the Donegal Development Plan 2018-2024 supports the development of sports and recreational facilities in general within the County. The lands are included within lands identified as a Master Plan area within the Seven Strategic Towns Local Area Plan 2018-2024 in which the development of the proposed site for recreational and sporting facilities is specifically referred to and supported.

6.4.2. The site is also specifically identified within the Ballybofey/Stranorlar Regeneration Strategy. It is outlined within this document that the development of the proposed all-weather pitch has been secured under the Shared Spaces theme of the Peace IV Programme.

6.4.3. Having regard to the foregoing it is clear that the proposed development is strongly supported by Donegal County Council at a policy level. I am therefore satisfied that in principle, the proposed development that would be facilitated by the compulsory purchase order, should it be confirmed by the Board, accords with the proper planning and sustainable development of the area and that the acquisition of the lands or interests therein would not materially contravene any specific policies or objectives of the Plan.

6.5. Use of Alternative Methods

6.5.1. Alternative measures of meeting the community need are constrained by the availability and location of suitable lands. The Council are seeking to develop a multi-sport facility within one site which can only be achieved if the lands to be developed are connected to the existing sports facility. I am satisfied based on the nature of the development that the proposed lands are the only suitable and logical option available to the Council which would facilitate the proposed development as required.

6.6. Proportionality and Necessity of Level of Acquisition Proposed

6.6.1. As mentioned above Maureen McNulty has raised the issue of proportionality within her objection in relation to the Plot 6B. It is contended within the objection that this element of the CPO is not required and is surplus to the requirements of the proposed development. However, I note the response from the Council in this regard in which it is stated that Plot 6B is required to accommodate the relocation of uses currently utilising a portion of Plot 6A and in the location of the proposed all weather pitch. I note from site inspection that these lands are current set out with football goals and appear to be used as a grass sports pitch. Given that Plot 6A will be developed as an all weather pitch and walking track I consider the acquisition of Plot 6B for the relocation of the grass pitch to be reasonable in this instance.

6.6.2. Thus, having reviewed the information submitted by Donegal County Council and the objectors and having inspected the lands, I am satisfied that the extent of the proposed permanent and temporary land acquisitions are necessary and are proportionate in the context of meeting the identified community need.

6.7. Additional Issues Raised by both Objectors.

6.7.1. Engagement in the process

6.7.2. Both objectors raised concerns and expressed dissatisfaction in relation to the level of engagement by the Council in relation to the process.

6.7.3. Whilst I acknowledge both objectors' dissatisfaction with the process, I have reviewed the file in relation to the Council Statutory obligations in relation to engagement of landowners and note that the Council complied with its statutory obligations in relation to the notification of landowners in relation to the process and also advertised the

process accordingly. I can therefore find no failure in relation to the Council's compliance with the relevant legislation in this regard.

6.7.4. Compliance with EU Law

6.7.5. It was also stated by the agent of Declan Doherty that the process is not in accordance with EU law, however no particular law was identified and no specifics in relation to where the Council had failed to comply with such laws were provided. It is further stated that the EIA is inadequate, it is important to note at this juncture that there is no EIA carried out in relation to this development, as mentioned above a NIS has been carried out in relation to the proposed development and forms part of a 177AE application which has been made to the Board separately under reference ABP 312895-22.

6.7.6. Thus, having reviewed the information submitted by Donegal County Council and the objections made as stated above I am of the opinion that there is a clear need for the proposed the development of a multisport facility at this location for the betterment of the community in Stranorlar and the surrounding area.

6.7.7. Access to remaining lands

6.7.8. I note concerns raised by Maureen McNulty in relation to accessibility to her remaining lands and further note the Council's response to same in which it is stated that access will be provided to the remaining lands via an existing lane which falls under Plot 01A, 01B, 3A and 4A which are being permanently acquired and will be in the full control of the Council. The Council further states that a wayleave will be formalised for Maureen McNulty to access her lands at all time both during construction and after completion of the proposed works.

6.7.9. Permission for carrying out surveys.

6.7.10. Maureen McNulty has raised concerns that the Council carried out surveys prior to obtaining permission. Whilst I acknowledge the objector's concerns in this regard, such matters are of a civil nature and one that the Board cannot adjudicate on.

6.7.11. Drainage Arrangement

6.7.12. Additional concerns raised by Maureen McNulty relate to drainage arrangements, it is stated by the Council that an advanced surface water drainage system is designed for the proposed facility, and it is proposed to attenuate all surface water generated within the site. The proposed new drainage system will improve drainage throughout the site

and within the immediate area. Given the location of the McNulty lands and the topography of the area it is stated that the proposed works will not impact upon the drainage of the McNulty lands and there will be no adverse impact on the lands in question.

6.8. Conclusion

6.8.1. In conclusion, I am satisfied that the process and procedures undertaken by Donegal County Council have been fair and reasonable, that Donegal County Council has demonstrated a pressing community need that would be facilitated by both the temporary and permanent acquisition of lands in respect of the lands identified in the schedule and drawings submitted to the Board, that said lands are both suitable and necessary to meet the community need and that the extent of acquisition is proportionate to the objective being pursued. I therefore consider that the proposed acquisition of permanent and temporary lands relating to the working areas would be in the public interest and the common good and would be consistent with the relevant provisions of the Donegal Development Plan 2018-2024 and the Seven Strategic Towns Local Area Plan 2018-2024.

6.9. Recommendation

6.10. I recommend that the Board confirm the Compulsory Purchase Order submitted on the 13th April 2022, based on the reasons and considerations set out below.

6.11. Reasons and Considerations

6.11.1. Having considered the objections made to the Compulsory Purchase Order, and not withdrawn, the report and recommendation of the Inspector and having regard to the following:

- (a) The community need, public interest served and overall benefits to be achieved from the proposed development;
- (b) The chosen location of works which constitutes a design response that is proportionate to the identified need;
- (c) The policies and objectives of the Donegal County Development Plan 2018-2024 and the Seven Strategic Towns Local Area Plan 2018-2024
- (d) The submissions received

It is considered that, the acquisition of permanent and temporary areas and creation of wayleaves by Donegal County Council on the lands in question, as set out in the order and on the deposited maps, are necessary for the purposes stated and the objections cannot be sustained having regard to the said necessity.

Sarah Lynch
Senior Planning Inspector

23rd March 2023