



An
Bord
Pleanála

Inspector's Report

ABP-314342-22

Development	Retention of hardcore yard and all associated site works.
Location	Crislaghmore, Burnfoot, Lifford PO, Co Donegal
Planning Authority	Donegal County Council
Planning Authority Reg. Ref.	2250941
Applicant(s)	Joseph Toland.
Type of Application	Permission.
Planning Authority Decision	Grant permission
Type of Appeal	Third Party
Appellant(s)	John A. McLaughlin.
Observer(s)	None.
Date of Site Inspection	3 rd February 2023.
Inspector	Barry O'Donnell

1.0 Site Location and Description

- 1.1. The subject site has a stated area of 0.83ha and is situated in the townland of Crislaghmore, northwest of Burnfoot in County Donegal. The site consists of an area of hardstanding (the subject of this application) and an area of unmaintained grassland that appears to have been filled/raised. The site has become overgrown and did not appear to be in active use at the time of my inspection.
- 1.2. The site is accessed from the L-7581, where it can be accessed via a stone track that serves the site and adjoining land to the north, and where it can be accessed via a hard-surfaced road that also provides access to a development of 5 No. houses. The two accesses are separated by a raised embankment.

2.0 Proposed Development

- 2.1. The proposed development entailed within the public notices comprises retention of a hardcore yard and associated site works.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. The Planning Authority granted permission on 21st July 2022, subject to 3 No. conditions.
 - Condition 1(b) states that permission is granted for a limited period of 2 years and if further permission is not granted, the landowner shall cover the hardcore area with a minimum of 100mm topsoil.
 - Condition 2(a) states that the hardcore area shall be used for purposes associated with farming only.
 - Condition 2(b) states that the hardcore area shall be allowed to colonise freely and no herbicide shall be applied to it or the top vegetative layer scraped off it.

3.2. **Planning Authority Reports**

- 3.2.1. A Planning Report dated 19th July 2022 has been provided, which reflects the decision to grant permission. The report states that historical filling of the site took place as exempted development and that the subject hardcore area was necessary as part of filling. The report further states that in pre-planning discussions the applicant indicated their intention to complete filling of the lands and that a temporary grant of permission would be appropriate, until such time as permission is granted for further filling. No concerns are expressed regarding its siting or design or potential impacts on adjacent residential amenity. The report recommends that permission be granted subject to 3 No. conditions, which are consistent with those attached to the Planning Authority's decision.
- 3.2.2. A separate Appropriate Assessment Screening Report is appended to the Planning Report, wherein it is determined that appropriate assessment is not required.
- 3.2.3. Other Technical Reports

A **Municipal District Engineer** report dated 18th July 2022 has been provided, which does not express any concerns regarding the development.

3.3. **Prescribed Bodies**

- 3.3.1. The Planning Authority indicates no prescribed bodies were consulted on the application.

3.4. **Third Party Observations**

- 3.4.1. A number of third party submissions were received, the issues raised within which can be summarised as follows: -
- Unauthorised development.
 - Traffic and road safety.
 - Landscape and visual impact.
 - Wildlife.
 - Appropriate assessment.

- Noise, odour, dust and vermin.
- Property values

4.0 Planning History

1270093: An application for retention and continuation of landfilling works, temporary access road and associated site works was deemed to be invalid by the Planning Authority on 14th May 2012 on the basis of a requirement to undertake appropriate assessment. The letter of notification to the applicant stated: -

'...appropriate assessment of the development is required as it cannot be excluded on the basis of objective scientific information that the proposed development will have a significant effect on a European Site- Lough Swilly SAC (site code 002287) and Lough Swilly SPA (site code 004075) and specifically that appropriate assessment of the existing development (proposed to be retained) would have been required had an application for permission been made before it was commenced.'

Relevant nearby planning history

1951168 – *Lands to the north:* Permission was granted on 4th March 2020 for retention of a machinery shed and filling of lands.

1750244 – *Lands to the west:* Permission was granted on 22nd August 2017 for retention of land filling and proposed importation of additional fill material, together with associated site works.

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. In such areas 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.

5.2. Natural Heritage Designations

- 5.2.1. The site is not located within or adjacent to any designated European site, the closest such sites being Lough Swilly SAC (Site Code 002287) and SPA (Site Code 004075), which are approx. 1.5km west.
- 5.2.2. Lough Swilly Including Big Isle, Blanket Nook & Inch Lake (Site Code 000166) is also designated as a proposed Natural Heritage Area.

5.3. EIA Screening

- 5.3.1. The proposed development comprises a hardcore area with a stated area of 0.14ha, which is stated to have been provided as part of agricultural landfilling works. 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

- 6.1.1. The grounds of appeal can be summarised as follows: -
 - Planning application
 - The proposed development is not adequately described within the application.
 - There is no demarcation of the boundary between the applicant's landfill and that of Mr. E McDaid.
 - It is noted that the previous application on this site was by Miah Toland, who stated he owned the lands at that time, but the current application is made by Joseph Toner. The Board may want to clarify this.
 - The application relates to the hardcore yard only and does not include the unauthorised landfill and thus constitutes project splitting.

- Filling at the site is not exempted development as it involves importation of waste to the site.
- The applicant is avoiding applying for retention of the landfilling operation.
- The site has been subject to enforcement proceedings, which were not adhered to. Had adequate measures been taken, it is unlikely that this application would have arisen.
 - The site has been used for HGV parking and dumping and storage of hardcore without permission.
- Road safety
 - The local road is inadequate to accommodate HGV traffic and the site access was opened without permission.
 - Vision lines from the site access are not identified. In the absence of same, the development will result in a traffic hazard.
- Local residents have experienced nuisance issues and visual impacts associated with landfilling on the site and use of the hardcore area for parking.
- Planning history
 - Permission was applied for in 2012 for retention and completion of landfill works on the wider landholding but the Planning Authority determined that appropriate assessment is required.
 - Permission was applied for in 2018 for retention permission for a shed and landfill, on adjacent lands to the north, but the Planning Authority determined that appropriate assessment is required.
 - Permission was granted for retention of the shed and landfill, in 2019.
- The site is located in area designated as Landscape Category 1.
- Appropriate assessment
 - The site is in proximity to Lough Swilly SAC and SPA. The Ecological Report submitted with the application does not take account of waste fill deposited on the lands, or impacts associated with plant and machinery.

- The in-combination assessment is limited and does not adequately consider other projects.
- Stage 2 appropriate assessment is required and the application cannot be considered.
- The Planning Authority should have consulted relevant bodies, in view of the site's location in a High Amenity area and in view of hydrological links to Natura 2000 sites.
- A grant of permission would set a precedent for other similar forms of development.
- The development has depreciated property values in the area.

6.2. Applicant Response

6.2.1. The applicant made a submission on the appeal on 1st September 2022, in a submission made by Harley Planning Consultants. The contents of the submission can be summarised as follows: -

- The application is for retention of the hardcore area, with a view to returning the lands to agricultural use. Use for storage or commercial purposes is not proposed and is not permitted by the Planning Authority's decision.
- The hardcore area was used for temporary HGV parking, associated with the family business, but this was ceased following enforcement action.
- The development is adequately described within the application and this was accepted by the Planning Authority, otherwise the application would have been invalidated.
- Claims that landfilling on the lands requires inclusion as part of the application are baseless. Filling was undertaken pursuant exempted development rights.
- The Ecological Report correctly addresses the development that is proposed as part of this application.
- The lands in question will be allowed to rewild and will be used for agriculture. In a rural area it is unreasonable to assert that use of land for agriculture will be seriously injurious to amenity or depreciate property values in the area.

- The access track is a temporary arrangement for the purposes of landfilling and will be ceased in the future. The applicant would not object to a condition by the Board, requiring closure of the access track and use of the wayleave access to the site, which is shared with adjacent housing. The applicant acknowledges that use of the wayleave may have a more detrimental impact on neighbouring houses.
- The local road network can accommodate agricultural traffic. Traffic associated with landfilling in the future will be for a temporary period and will be assessed as part of an application.
- The return of the lands to agricultural use, which the hardcore area enables, is a satisfactory development in an area of high scenic amenity.

6.3. Planning Authority Response

6.3.1. The Planning Authority made a submission on the appeal on 8th September 2022, the contents of which can be summarised as follows: -

- Background
 - Historic landfilling took place under exempted development provisions that were in place until 2011 (Class 11, Part 1 of Schedule 2 of the Regulations).
 - The Board has determined on a number of S5 referrals that importation of waste was permissible under the aforesaid Class 11 exemption.
 - In view of the above, landfilling was not unauthorised and there is no requirement to regularise same.
- A decision was made to grant permission on this application, to regularise the hardcore yard.
- The provisions of S177U and S177V of the Act are such that, as no planning consent is required for filling of the lands and there is no current application seeking to retain same, there is no obligation to screen these works as part of appropriate assessment of the subject development.
- The Board is requested to uphold the decision to grant permission.

6.4. Observations

6.4.1. None.

6.5. Prescribed Bodies

6.5.1. The appeal was circulated to The Heritage Council, An Taisce and the Department of Housing, Local Government and Heritage. No responding submissions were received.

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 neighbouring property;
- Access;
- Other issues; and
- Appropriate assessment.

7.2. Principle of Development

7.2.1. No cover letter or project justification was submitted with the application.

7.2.2. The Planning Authority's report on the application states that historical filling of the land comprised exempted development under Class 11, Part 3, Schedule 2 of the Regulations and that the hardcore area the subject of this application was necessary as part of filling activity. The report further states that the aforementioned Class 11 was replaced by Article 8C of the Regulations in 2011, which had the effect of de-exempting land reclamation works and which had the knock-on effect of further de-exempting a temporary exemption (Class 16, Part 1, Schedule 2) for a road and yard associated with filling.

7.2.3. The Planning Authority's decision on the application included condition 1(b) which stipulates that permission is granted for 2 years for the hardcore area and this is

grounded in the fact that no application had been forthcoming for further filling of the lands.

- 7.2.4. The appellant outlines the nature of historic filling in the area, that such works are unauthorised and have given rise to nuisance issues and visual impacts associated with landfilling on the site and use of the hardcore area for parking. The appellant further submits that the proposed development amounts to project splitting as it seeks permission for an element of the development but omits the primary element i.e. the landfill.
- 7.2.5. In responding to the appeal the applicant outlines the background to filling on the lands, stating that the lands were bought in 2008 and that reclamation works were commenced by filling, which included securing a waste facility permit. The date of cessation of filling of the lands is unstated. The submission acknowledges that enforcement action was instigated by the Planning Authority in 2019 in relation to the parking of HGVs on the subject site and that the use, which was for a temporary period by the applicant's family haulage business, has now ceased.
- 7.2.6. The applicant further states that he farms approx 135 acres on land in the north of the Inishowen Peninsula and that the lands of which the subject site forms part (measuring 1.6ha) will provide a base prior to exportation of livestock to the UK. He states that a further application for reclamation of the remaining lands, for return to agricultural use, is envisaged.
- 7.2.7. I have given consideration to the information provided with the application and appeal. I agree with the appellant that the subject development is linked to wider filling of the lands and in this regard, I am concerned that a grant of permission in this instance does not serve a wider purpose and merely serves to allow the hardcore area to be retained in situ. That is to say, it does not serve any agricultural use of the land (there is farmland further west but it is outside of the blue line boundary) and will not enable further landfilling, which itself requires planning permission. In my view, the development has not been adequately justified and in the absence of same, results in the encroachment of random development into the rural area contrary to policy NH-P-7 of the development plan, which seeks to facilitate development of a nature, location and scale that integrates within and reflects the character and amenity designation of the landscape.

- 7.2.8. Further and as is set out elsewhere in my report, I have concerns regarding the level of information provided with the application, with reference to the make-up of material deposited on the subject site and wider landholding, together with assessment of potential effects on Lough Swilly SAC and SPA, which are to the west of the site. I am aware, as the appellant points out, that in 2012 an application was made for retention and completion of landfill works on the wider landholding but the Planning Authority refused to consider the application on the basis that stage 2 appropriate assessment was determined to be required.
- 7.2.9. The appellant also expresses concern regarding historic landfilling on the site, stating that it is not exempted development and that enforcement proceedings have not been adhered to. These are not matters to be considered by the Board in its assessment of the application, which does not propose further landfilling.
- 7.2.10. To conclude, I do not consider the development has been adequately justified and recommend that permission be refused on this basis.

7.3. Impact on Neighbouring Property

- 7.3.1. There is a cluster of 5 No. houses immediately east of the subject site, which is separated from it by a raised embankment that separates the access to the housing development and the stone access to the subject site. There are other rural houses in the area, particularly along the L-7581.
- 7.3.2. I note and acknowledge the appellant's concerns regarding nuisance, which appears to be related to HGVs accessing and parking on the site. The applicant also acknowledges that parking of HGVs took place on the site and was unauthorised, but the applicant also states that this use has ceased and this appeared to be the case at the time of my site visit, where the site appeared to have been effectively abandoned.
- 7.3.3. I have previously outlined that the hardcore area does not serve any agricultural use of the land and will not enable further landfilling and, in this context, I am satisfied that it does not have any material impact on neighbouring property. Any unauthorised use of the area is matter for the Planning Authority, which has responsibility for enforcement.

7.4. Access

- 7.4.1. The site is accessed from the L-7581, where it is currently accessible via two separate access routes: (1) a stone track that serves the site and adjoining land to the north, and (2) a hard-surfaced road that also provides access to a development of 5 No. houses. The two accesses are separated by a raised embankment.
- 7.4.2. The appellant expresses concern that the local road is inadequate to accommodate HGV traffic and that in the absence of adequate sightlines, the development will result in a traffic hazard. The appellant also claims the stone track access is unauthorised.
- 7.4.3. The Board will note that the stone track access is outside of the application site red line boundary and thus does not form part of the application. The applicant appears to indicate that it does not have planning permission (they also indicate they would accept a condition by the Board requiring that this access be closed) but this is a matter for the Planning Authority, which has responsibility for planning enforcement. For completeness, I have not considered this access any further in my assessment.
- 7.4.4. The hard-surface road that is shared with adjacent housing leads southward from the L-7581 and provides access to agricultural land, including the subject site. Sightlines of approx. 50m are identified in both directions from the site access, which falls below the minimum requirement of 90m where the L-7581 is subject to an 80km/h speed limit. The under-provision was not justified by the application and the issue was not addressed by the Planning Authority.
- 7.4.5. The access arrangement is existing and the Board will be aware that the proposed development does not involve any intensification of the usage of the access. In these circumstances, I consider it would be unjustified to refuse permission on this basis. It will be a matter for the applicant to justify the achievable sightlines as part of any future application for development works on the land.

7.5. **Other Issues**

- 7.5.1. The appellant expresses a number of concerns regarding the content and validity of the application, including with reference to the description of development, applicant details and site boundaries. These issues relate to application validation and are matters for the Planning Authority, which has responsibility for this aspect of the proposal.

7.6. **Appropriate Assessment**

Appropriate Assessment Screening

Compliance with Article 6(3) of the Habitats Directive

- 7.6.1. 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

- 7.6.2. An Ecological Report was submitted with this appeal case, prepared by Greentrack Environmental Consultants, which assesses potential impacts of the development on the Natura 2000 network.

Screening for Appropriate Assessment- Test of likely significant effects

- 7.6.3. 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).
- 7.6.4. 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

- 7.6.5. The development is described at Section 2 of this Report. In summary, permission is sought for retention of a hardcore yard and associated site works.
- 7.6.6. Taking account of the characteristics of the proposed development, I consider the following potential impact mechanisms require examination:

- Impacts on water quality within a Natura 2000 site arising from deposition of material to create a hardcore yard.

Submissions and Observations

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

European Sites

7.6.8. The site is not located within or adjacent to any designated European site. The closest such sites are Lough Swilly SAC (Site Code 002287) and SPA (Site Code 004075), which are approx. 1.5km west.

7.6.9. The Ecological Report identifies the following additional Natura 2000 sites falling within a 15km search zone of the site: -

- Lough Foyle SPA (Site Code 004087), 11.2km east,
- River Finn SAC (Site Code 002301), 13.6km south,
- Leannan River SAC (Site Code 002176), 14.6km west,
- Horn Head to Fanad SPA (Site Code 004194), 14.9km north-west.

7.6.10. In the case of Lough Foyle SPA, River Finn SAC, Leannan River SAC and Horn Head to Fanad SPA the Ecological Report states that there is no direct hydrological to the subject site and on this basis the potential for significant effects is excluded. I concur with this conclusion and would further note the distance to each of these sites.

7.6.11. Summaries of Lough Swilly SAC and SPA are outlined in the table below.

European Site (code)	List of Qualifying interest /Special conservation Interest
Lough Swilly SAC (Site Code 002287)	Estuaries, Coastal lagoons, Atlantic salt meadows, Molinia meadows on calcareous, peaty or clayey-silt-laden soils, Old sessile oak woods with Ilex and Blechnum in the British Isles, Otter
Lough Swilly SPA (Site Code 004075)	Great Crested Grebe, Grey Heron, Whooper Swan, Greylag Goose, Shelduck, Wigeon, Teal, Mallard, Shoveler, Scaup, Goldeneye, Red-breasted Merganser, Coot, Oystercatcher, Knot, Dunlin, Curlew, Redshank, Greenshank, Black-headed Gull, Common Gull, Sandwich Tern, Common Tern, Greenland White-fronted Goose, Wetland and Waterbirds

7.6.12. In respect of Lough Swilly SAC and SPA, the Ecological Report concludes as follows: -

'The proposal as detailed has been examined in relation to potential negative impacts that could have been caused, or may be caused, on the immediate and surrounding environs and on the Natura 2000 sites. The development and associated activities have been examined fully in Table 5.1 which detailed all qualifying interests, general threats and potential threats from the existing project. This screening matrix established that the project did not have, and will not have, any significant negative effect on any of the qualifying interests of the Lough Swilly SAC and Lough Swilly SPA. On this basis it can be concluded that this proposal does not require an Appropriate Assessment or would not have required an Appropriate Assessment had an application for permission been made before the development was commenced.'

Evaluation of Effects

7.6.13. As I have set out, the potential for impacts on water quality within a Natura 2000 site arising from deposition of material to create a hardcore yard requires consideration. The site layout drawing identifies that the hardcore area measures 0.136ha. The depth of fill material and its composition are unstated.

7.6.14. With reference to the drainage characteristics of the site, the Ecological Report states as follows: -

'There are no dedicated stormwater drainage channels evident on site...runoff from the hardcored area would appear to flow to the vegetated area in the northern portion of the site. There is an informal heavily vegetated channel/depression in the ground running approximately east to west which appears to channel any surface water to the drainage ditch on the western boundary of the site. The drainage ditch flows into a watercourse flowing east forming one of the tributaries of the Skeoge River. The Skeoge River eventually empties into Inch Lake. The Lough Swilly SAC is encountered on the Skeoge River approximately 550m before the Skeoge River discharges into Inch Lake.'

7.6.15. The Natura 2000 form for Lough Swilly SAC outlines that it is at high risk from pollution to surface waters (code H01). The Conservation Objectives document for the SAC identifies that the risk relates to the *coastal lagoons* habitat type, which encompasses Inch Lake.

- 7.6.16. Available EPA drainage mapping¹ indicates that surface waters in the area drain generally southward, toward Inch Lake and the Lough Swilly SAC/SPA complex. The applicant also identifies a hydrological connection between the subject site and SAC/SPA, via a drainage channel that ultimately discharges to the Skeoge River, which itself flows into Inch Lake.
- 7.6.17. The precise nature of the drainage network on the site is unclear and as I have previously stated, the depth of fill material and its composition are unstated. In view of the direct connection, I consider the development has the potential to result in significant effects arising from surface water discharges from the site and the issue therefore cannot be excluded at this stage.

Screening Determination

- 7.6.18. 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 Appropriate Assessment is required as it cannot be excluded on the basis of objective information that the proposed development, individually or in combination, will have a significant effect on the following European sites.
- Lough Swilly SAC (Site Code 002287), and
 - Lough Swilly SPA (Site Code 004075).

Appropriate Assessment

- 7.6.19. The conservation objectives for Lough Swilly SAC are: (1) *To maintain the favourable conservation condition of Estuaries in Lough Swilly SAC*, (2) *To restore the favourable conservation condition of Lagoons in Lough Swilly SAC*, (3) *To restore the favourable conservation condition of Lagoons in Lough Swilly SAC*, (4) *To restore the favourable conservation condition of Atlantic salt meadows in Lough Swilly SAC*, (5) *To restore the favourable conservation condition of Atlantic salt meadows in Lough Swilly SAC*, (6) *To restore the favourable conservation condition of Otter in Lough Swilly SAC*, (7) *To restore the favourable conservation condition of Old oak woodland with Ilex and Blechnum in Lough Swilly SAC* and (8) *To restore*

¹ <https://gis.epa.ie/EPAMaps/>

the favourable conservation condition of Old oak woodland with Ilex and Blechnum in Lough Swilly SAC.

- 7.6.20. There is a common conservation objective for Lough Swilly SPA: *To maintain the favourable conservation condition of species of conservation interest within the SPA.*
- 7.6.21. I have previously set out that there is potential for indirect impacts, in view of the direct hydrological connection between the sites. In particular, and as I have stated previously, the *coastal lagoons* habitat type within the SAC that lies at the point of entry of the Skeoge River is identified by the NPWS Conservation Objectives document as being a high risk from pollution to surface waters.
- 7.6.22. Available EPA records indicate that the Skeoge River has a Q-value status of '2-3', which equates to a *poor or moderately polluted/unsatisfactory* status, albeit the monitoring point is upstream of the point where the tributary that accommodates the subject site enters the river.
- 7.6.23. The Ecological Report discusses surface water drainage but does not provide precise details of any on-site system. From the information provided, it appears there is no engineered surface water drainage system on the site. Further, I note the Ecological Report indicates that surface water drainage from the adjacent housing development and access road may be piped under the hardcore area and may discharge within the site. Again, no details of the characteristics of this system have been provided.
- 7.6.24. There is a risk that suspended solid and/or pollutant content may be discharged from the site but in the absence of any information on which to base an assessment, I am unable to undertake any meaningful assessment.
- 7.6.25. It is also relevant to note that in addition to landfilling on the applicant's lands, landfilling has taken place elsewhere in the local area. Permission was granted under Reg. Ref. 1750244 on a site to the west for retention of landfilling and proposed importation of additional fill material and permission was granted under Reg. Ref. 1951168 on an adjacent site to the north for retention of the filling of lands also. Both of these sites lie within the same hydrological catchment as the subject site and both ultimately discharge to the Skeoge River and the European sites. The potential for in-combination effects therefore arises.

Conclusion

- 7.6.26. Using the source-pathway-receptor concept, I consider that the proposed development has the potential to have a significant effects on Lough Swilly SAC (Site Code 002287) and SPA (Site Code 004075) by way of direct hydrological connection and the potential for suspended solid and/or pollutant to be discharged from the site, to the drainage network. The absence of sufficient information to allow an assessment of the likelihood and significant of such effects is considered to be a gap in information. As such, I recommend that planning permission should be refused on this basis.

8.0 Recommendation

- 8.1. I recommend that planning permission is refused for following reasons and considerations set out hereunder.

9.0 Reasons and Considerations

1. Having regard to the site's proximity and direct hydrological connection to Lough Swilly SAC (Site Code 002287) and Lough Swilly SPA (Site Code 004075) the Board, on the basis of the information provided with the application and appeal, is unable to ascertain, as required by Regulation 27(3) of the European Communities (Natural Habitats) Regulations, 1997, that the development proposed for retention will not adversely affect the integrity of a European site. In these circumstances, in accordance with Section 34(12) of the Planning and Development Act, 2000, as amended, the Board is precluded from granting permission for retention of development.
2. The development proposed for retention, which has not been shown to serve any agricultural use of the applicant's land and will not in and of itself enable further landfilling, has not been adequately justified and is thus considered to result in the encroachment of random development into the rural area, contrary to policy NH-P-7 of the development plan, which seeks to facilitate development of a nature, location and scale that integrates within and reflects the character and amenity designation of the landscape.

Barry O'Donnell
Planning Inspector

1st March 2023.