



An
Bord
Pleanála

Inspector's Report

ABP-318516-23

Development	Retention and completion of a partially constructed single storey extension (permitted under Planning Authority Reference Number 17/282) to the production building.
Location	Mullatee, Greenore Road (R176), Carlingford, Co. Louth.
Planning Authority	Louth County Council
Planning Authority Reg. Ref.	2360352
Applicant(s)	Carlingford Oyster Company Limited
Type of Application	Retention and Completion
Planning Authority Decision	Grant with Conditions
Type of Appeal	Third Party
Appellant(s)	Tommy & Teresa Farrell
Observer(s)	None
Date of Site Inspection	09/05/2024

1.0 Site Location and Description

- 1.1. The site (stated area 0.0184ha) which forms part of an overall site associated with Carlingford Oyster Company (stated area 0.9ha) is located on the shores of Carlingford Lough and fronts onto the eastern side of the R176 Greenore Road at Mullatee approximately 2.2km south of Carlingford. This regional road is designated a 'Protected Regional Road' and is also listed as a scenic route.
- 1.2. The NE boundary of the wider site is open to the shore and Carlingford Lough. The wider site has an established commercial use as an oyster farm and production facility for over approximately 30 years with a number of associated buildings that include purification tanks, processing area and office space. A concrete yard area and compacted gravel surfacing is contained within the overall boundary of the applicant's business. Storage areas, containers and vehicles are also found on the overall site. More recent development works are evident on the wider site and described within associated documentation on this case as groins of rubble stone utilised for the storage of machinery and oyster trestles and a visitor's centre, information and sampling room and outdoor terrace with viewing facilities.
- 1.3. The delineated site is not standalone and is centrally located within the overall site. It comprises unfinished construction works (notably concrete base and steel frame) which are attached to the southern elevation of an existing production building. A hard surfaced area accommodates vehicular access and circulation along its southern and western boundary.
- 1.4. The wider site of which this site forms part, partially overlaps and adjoins Carlingford Shore SPA and Carlingford Lough SAC and pNHA, to the north, south and east.

Carlingford Lough is identified as 'Designated Shellfish Waters'. The site is served by a public water connection and on-site wastewater treatment system.

2.0 Proposed Development

2.1. Retention and Completion of the following:

- Partially constructed single storey extension (159m²) which was previously permitted (PA Ref. 17/282) to the south end of existing production building (474m²), with its principal dimensions being an overall height (4.8m), length (12.5m) and width (13m).
- Additional production floorspace (c.25m²) SW of the partially constructed extension which will facilitate the operation of two internal oyster grading lines.
- The external material finishes are proposed to match existing finishes on the main production building.

It is stated that the above works will enable the provision of a modern and hygienic processing and packaging area that is segregated from other coarser, natural detritus generated by the daily operations of grading and sorting oysters and required by modern statutory food hygiene regulations.

2.2. The application was accompanied by the following documentation of note –

- AA Screening Report
- Planning Statement.

3.0 Planning Authority Decision

3.1. Decision

By Order dated 3 November 2023, Louth County Council issued a Notification of decision to grant planning permission subject to 12(no) conditions. The conditions were mainly standard, and the following are of note:

- Compliance with the conditions set out in the parent permission PA Ref. 17/282, except where otherwise authorised by this permission (Condition 2)
- Restricts use of extension to the use stated in the submitted plans and particulars (Condition 3)
- Surface Water Requirements (Condition 5)
- Provide details on the storage of hazardous materials (Condition 9)
- Provide a Construction and Demolition Resource Waste Management Plan (Condition 10)
- Noise Monitoring (if required) (Condition 11).

3.2. Planning Authority Reports

3.2.1. Planning Reports

A planning report dated 01/11/2023 concludes that the retention works proposed are relatively minor in nature given the existing long established, location specific use of the lands as an oyster farm and production facility and generally accepts the proposal submitted, subject to conditions. This report forms the basis for the decision by Louth County Council to grant permission, subject to compliance with conditions.

3.2.2. Other Technical Reports

- Placemaking & Physical Infrastructure Section: (18/10/23) No objection and recommends conditions.
- Environment Section (25/10/23) Recommends conditions.

3.3. Prescribed Bodies

- Loughs Agency (16/10/23) No objection subject to conditions [apply best environmental practice close to watercourses; storm water discharge; bunding and careful management of cement/concrete use on site].
- [Advisory Note: Application was not referred to Development Applications Unit, Department of Housing, Local Government and Heritage].

3.4. Third Party Observations

The Planning Authority (PA) received two third-party submissions during the course of their determination. The content of one of these submissions is reflected in the third-party appeal. The second submission outlines that they are not opposed to the proposed shed but are opposed to the manner of this application (being retention works) and unauthorised development on the overall site which should be dealt with in advance of submitting separate applications. Site safety and the rationale provided on non-completion of the permitted development during the statutory time period of Pl. Ref. 17/282 are also queried.

4.0 Planning History

Subject Site

In the outset, I wish to highlight that the site as delineated in red in this case solely encompasses the footprint of the retention works sought. Whilst the site is contained within and integral to the established site of Carlingford Oyster Company, the site boundaries as delineated in this case exclude the permitted production building onto which the extension proposed for retention is sought and associated development contained within the wider site of Carlingford Oyster Company Ltd. at this location. The planning history associated with the overall site is therefore relevant to this case and is set out below.

Overall Site of Carlingford Oyster Company Ltd.

22 U212: Planning Enforcement case – Details on extent of unauthorised work is not available on the Planning Authority’s online planning register.

A referral submission from DHLGH to the Board makes reference to this enforcement case. It outlines that works carried out by the applicant in recent years have encroached on the SAC & SPA, including the construction of groins of rubble stone on which machinery and oyster trestles have been stored and a building apparently intended to function as a visitor facility for the oyster farm and production facility which partially extends into the European sites.

A submission made on behalf of the applicant to the Board (17/06/24) references that the case details pertaining to unauthorised development on this site has been the subject of a Warning Letter and not an Enforcement Notice.

PA. Ref. 22/828: Permission for the change of use from existing storage/canteen to restaurant was refused by Louth County Council on the grounds of existing unauthorised development on the site; lack of details on surface water design & on-site wastewater treatment/disposal, appropriate assessment (due to lack of sufficient details provided) and traffic hazard due to intensification of access.

The Planner’s Report references that no AA Screening Report was attached to this application, that the site is hydrologically linked to Carlingford Shore SAC and Carlingford Lough SPA and expressed “*..environmental concerns in that regard, given the lack of information submitted with the application and the presence of other related unauthorised structures and development works not applied for or granted under previous permission Ref. 17/282*”. The planning officer stated that “*having regard to the very close proximity of the Natura 2000 sites, the nature of the development, proposal for surface water to run directly into the Carlingford Lough, the other unauthorised development at the site and the wastewater treatment issues, it cannot be determined beyond reasonable scientific doubt based on the information submitted that the proposed development would not be likely to have a significant effect, individually, or in combination with other plans or projects, on any European Site, particularly Carlingford Shore SAC and Carlingford Lough SPA*”. I note that in its reasons for refusal, the Planning Authority refers to the absence of an AA

Screening/NIS with this application and states that it cannot be satisfied that the proposal individually, or in combination with other plans or projects would not be likely to have a significant effect on European sites in view of their Conservation Objectives and that in such circumstances, it is precluded from granting permission.

PA. Ref. 17/282: Retention works (storage shed & prefab canteen) and permission works (change of use of canteen to storage, extension of main production building and extension to existing purification building) was granted by Louth County Council. This permission has now withered. The current appeal relates in part to this permitted planning application, with retention and completion sought in this case for an extension to the production building.

In regard to appropriate assessment, the Department in a submission on this application expressed concerns in relation to the submitted proposal on a number of grounds (location, consideration of an alternative development location, the cumulative impact, work/construction methods, disturbance, bird usage, waste/wastewater treatment) and the potential impacts on Carlingford Lough (SPA) and Carlingford Shore (SAC). The submission of a Natura Impact Statement was subsequently sought by way of further information. On receipt of same, the Department were of the view that the proposal had potential to damage a significant population of light-bellied brent goose (Annex II) and the potential to disturb the habitat of a significant population of light-bellied brent goose due to deterioration of water quality in the lough (wastewater treatment plant, run-off/spillage or other contamination, disturbance due to construction activities causing noise & light pollution and disturbance due to construction activities during sensitive times or months) and recommended that conditions be attached in order to mitigate this potential impact. The application was subsequently permitted by the Planning Authority with conditions attached.

PA. Ref. 10348: Permission to construct a building (54m²) to contain purification tanks was granted by Louth County Council. The Planner's report references that in its consideration of a report on AA Screening, submitted in response to the PA's request for further information, the DEHLG (2010) were satisfied that subject to conditions, the

proposed development would not adversely affect the SAC and SPA. The Water Services Section also raised no objection in response to the details received.

PA. Ref. 93/84: Permission for an Oyster Shed for grading and packing was granted.

5.0 Policy Context

5.1. Development Plan

Economic Development

EE 3 (To facilitate and support the sustainable growth of the economy in County Louth whilst maintaining and improving environmental quality....)

EE 16 To facilitate and support unexpected opportunities for valid propositions for enterprise development that may emerge for which there are strong locational drivers that do not apply to the same extent elsewhere.

EE 22 To recognise the importance of and to encourage and facilitate the growth and development of local indigenous enterprises in appropriate locations in the County.

Water Quality

IU 22 To ensure all new development incorporates appropriate measures to protect existing water bodies, through appropriate treatment of runoff....

Ecology/Aquaculture

ENV 67 To protect the quality of designated shellfish waters off the Louth coast.

ENV 69 To ensure that proposals for economic development associated with the marine sector reflect the environmental sensitivities of the Louth coastline and are considered accordingly.

European Sites

NBG 3 To protect and conserve Special Areas of Conservation (SACs) and Special Protection Areas (SPAs) designated under the EU Habitats and Birds Directives.

NBG 4 To ensure that all proposed developments comply with the requirements set out in the DECLG 'Appropriate Assessment of Plans and Projects in Ireland – Guidance for Planning Authorities 2010'.

NBG 5 To ensure that no plan, programme, or project giving rise to significant cumulative, direct, indirect or secondary impacts on European sites arising from their size or scale, land take, proximity, resource requirements, emissions (disposal to land, water or air), transportation requirements, duration of construction, operation, decommissioning or from any other effects shall be permitted on the basis of this Plan, either individually or in combination with other plans, programmes or projects.

The following chapters are of relevance:

Chapter 5 Economy & Employment; Chapter 8 Natural Heritage, Biodiversity and Green Infrastructure; Chapter 10 Infrastructure and Public Utilities; Chapter 11 Environment, Natural Resources & the Coast and Chapter 13 Development Management Guidelines.

5.2. National Planning Framework

NPO 23 Facilitate the development of the rural economy through supporting a sustainable and economically efficient agricultural and food sector, together with forestry, fishing and aquaculture, energy and extractive industries, the bio-economy and diversification into alternative on-farm and off-farm activities, while at the same time noting the importance of maintaining and protecting the natural landscape and built heritage which are vital to rural tourism.

5.3. Natural Heritage Designations

The appeal site is encompassed within an established aquaculture commercial site that is directly connected to and immediately adjoins Carlingford Lough, a designated Special Protection Area (004078) and proposed Natural Heritage Area (000542) and Carlingford Shore Special Area of Conservation (002306).

5.4. EIA Screening

See completed Form 2 on file. Having regard to the nature, size and location of the proposed development and to the criteria set out in Schedule 7 of the Regulations, I have concluded at preliminary examination that there is no real likelihood of significant effects on the environment arising from the proposed development. EIA, therefore, is not required.

6.0 The Appeal

6.1. Grounds of Appeal

A Third-Party Appeal has been received from Tommy & Teresa Farrell ('the appellant') in relation to the PA's decision to grant permission. The appellant does not accept the PA's determination and a summary of the grounds of appeal is provided below.

- **Unauthorised Works**

Current investigations on planning enforcement matters associated with the wider site and which have negatively impacted on the coastline (SAC/SPA), environment and locality should be dealt with in advance of a decision on this case. The scale and footprint of the proposed extension might hinder future access required in the removal of unauthorised development.

- **Procedural**

Concerns on the company's continual disregard approach to planning, future compliance with building regulations, inaccuracies in the plans submitted and the rationale provided for the non-completion of works during the appropriate period. It is stated that the planning process should be fair and impartial. Further concerns expressed in regard to the unpermitted development works described within the AA Screening document that accompanies the application. The need for the extension proposed is queried on the grounds that the site's aquaculture license shows no evidence of an increase in production in terms of the amount of trestles used (as shown on mapping).

6.2. Applicant Response

- Overview

The applicant's response to the appeal includes a summary on the background to the established operations on this site, justification on the need for the proposed extension and an overview of the day-to-day operations of the business (in terms of farming, production, processing, packaging, dispatching, sales and marketing). The regulation and monitoring of operations by a range of statutory bodies is also outlined and a concluding statement provided which refers to the works as being minor, inherently location and resource based and that the development overall has positive outcomes in terms of providing local employment and enhancing the areas image at a national and international level. A number of attachments by way of appendices are included in regard to licensing, inspection and certifications associated with the wider site.

- Appropriate Assessment

The proposal consists of a minor extension to an authorised and longstanding development and will not result in any AA issues. The submission also references the outcomes of separate appropriate assessment exercises on the impacts of aquaculture on both Carlingford Lough SAC and SPA, undertaken by the Marine Institute on behalf of the Department of Agriculture, Food and the Marine in 2022. The applicant comments that the conclusions reached in the AA screening which accompanies the appeal case and its potential effects on the conservation objectives of the SAC and SPA, are broadly consistent with the conclusions of those undertaken by the Marine Institute in their wider exercise in 2022 and that the PA reached the same conclusions in their assessment of the proposed development.

- Other Unauthorised Development

An Bord Pleanála has no role in enforcement, which falls under part 8 of the PDA and the applicant is engaged with the PA on enforcement matters pertaining to the site. The applicant refers to the PA's acceptance of the works proposed as constituting 'a minor development to an authorised and longstanding oyster production facility'. Access/circulation for heavy machinery within the site will not be restricted, given that there is at least 10m to the north of the main production building which allows access

around the subject works, should it be required. The PA raised no concerns on access or circulation within the site.

- Procedural

There is no substance to the appellants contention of preferential treatment in this case. The appeal submission disregards that the proposal relates to authorised uses & structures and that a substantial element of the extension proposed in this case was previously permitted under a 2017 planning application, with no objections from third parties or prescribed bodies at this time. The appellants view in regard to circumstances which restricted the completion of works during the statutory period of the 2017 permission is entirely based on conjecture and without substance and further details are contained within the applicant's response statement in this regard. The applicant does not agree that the submitted plans contain inaccuracies and references that the application was deemed valid by the PA and that compliance with Building Regulations are dealt with under a separate statutory process.

6.3. Planning Authority Response

A response has been received from the PA dated 14/12/2023 which refers to matters raised in the appeal with regard to the enforcement process, building regulations and the non-completion of works in the appropriate period. It restates its consideration that the extent of works sought in this case are relatively minor in nature given the long-established use on the site. The PA requests that the Board upholds its decision to grant permission.

6.4. Further Responses

6.4.1. Department of Housing, Local Government and Heritage

Following a referral request by An Bord Pleanála, a response to this appeal was submitted by the Development Applications Unit, DHLGH (dated 31/01/24). The submission outlined the following:

- Procedural

No referral request issued to the Department at application stage on this case despite the site's proximity to two Natura 2000 sites and ongoing engagement in relation to a

planning enforcement case on the site. A previous decision on this site stated that the PA were precluded from considering granting permission due to associated unauthorised development on the site (planning reference 22/828).

- Impact(s) on European Site(s)

The Department in its submission details that unauthorised works were undertaken in recent years within the applicant's wider site which encroach on an SAC and SPA and states that these unauthorised works remain. Concerns are expressed that the planning approach in this case constitutes project splitting as the proposed works form part of an overall development strategy for the site, combining enhanced linked production and visitor/tourist facilities. The Department outlines that potential adverse effects on the adjoining SAC and SPA which may have resulted or result from other unauthorised works on the overall site is required prior to permitting the proposed development.

6.4.2 First Party Response (The Applicant)

The submission received from DHLGH (dated 31/01/24) was circulated to the applicant on 31 May 2024 and a written response from the applicant was received on 17 June 2024. It refers to the applicant's active engagement with the PA and recent works (including removal of unauthorised shipping container) so as to regularise planning matters on site in order to remain operational, meet food production regulatory requirements and protect staff livelihoods (30 staff). The development which is entirely location dependent, is an extension of a long established and authorised use on the site and was the subject of a previous grant of permission, with no objection from the Department at that time. Furthermore, the applicant states that the Department in its submission in this case does not recommend a refusal.

A number of matters outlined within the applicant's initial submission, extent of monitoring on Carlingford Lough and the AA Screening conclusions reached are re-stated. The applicant also clarifies the current status of a planning enforcement case associated with the site and highlights that the Board has no role in the enforcement process.

In acknowledging the Department's concerns, the applicant requests that the Board takes account of the following:

- Carlingford Lough is protected under the Shellfish Water's Directive, with the appeal site within the designated area. Water quality is vital for the production of high quality shellfish and oyster farming has a net positive effect on water quality and the environment.
- The subject building for which retention is sought is not within the SAC, SPA.
- The function of the building which is subject to this application is not in any way linked to the rubble stone groins and therefore there is no project splitting.
- In regard to winter birds, the applicant refers to the established operational use at this site and that it has been in active use long before the designation of Carlingford Lough as a Natura 2000 site. It is further stated that the light bellied brent goose and wetland & waterbirds (qualifying interests) are now accustomed to all development and activities that take place on the site, including unauthorised development(s) and that the development site sits above the level of the feeding area for the qualifying species.
- In regard to SAC designated habitats, it outlines that none occur around the subject site (i.e. no strand line and stonebank vegetation) and that there is no possibility of the development impinging on them or reducing their area).
- An accompanying letter from the applicant accompanies the submission made on its behalf. It provides a synopsis on the establishment of the business, current farming practices & licensing and the benefits of the proposed works to both the applicant's business and also in terms of the visual quality of the area. The applicant emphasises within its submission that without the recourse to modernise the 30 year old oyster grading, purification and dispatch premises facilitated by the extension sought and as previously granted in 2017, the business will be unable to comply with the evolving SFPA food hygiene regulations, will lose the financial capacity to retain its experienced team with consequent losses to the community in terms of job losses and loss of an important export business.

6.4.3 Third Party Response (The Appellant)

A further response from the appellant on 13 June 24 was received following the circulation of the DHLGH's submission (dated 31/01/24) on 31 May 2024. The

appellant concurs with many areas outlined in the Department's submission and notes that these were already raised with the Council in 2022.

The appellant states that the dumping of tonnes of rubble directly into an SAC/SPA area is the main issue that was raised initially with the Council in 2022 and that its purpose is to elevate and extend the current site, which took place without intervention or without a dumping at sea permit and is now in part used for storage of farm machinery, oyster bags and trestles which were previously stored at the front of the business. Reference is also made to other works that have taken place without the benefit of planning permission on this site, including aluminium balustrades and glass fitted to create a viewing area, large glass fronted shipping container, slipway into the SAC/SPA area, wall erected, shed constructed, car park laid out and an application for change of purpose from canteen to restaurant was lodged and rejected.

The appellant restates concerns outlined in its initial appeal submission in this case and highlights that the site's layout has changed considerably in recent years and that it has changed the shape of the coastline which has impacted on the environment. (Photographic images are attached to submission).

6.4.4 Planning Authority Response

The submission received from DHLGH (dated 31/01/24) to this case was also circulated to the PA on 31 May 2024 and a further response from the PA was received on 11 June 24. It requests that the Board upholds the PA's decision to grant permission for the proposed development. In doing so, the PA restates its view on the proposed retention works as being 'minor' and that they therefore are not deemed to constitute project splitting. It states that any enforcement matters at the site are currently under investigation and will be dealt with in line with relevant procedures, and it confirms that the application was dealt with in an open, transparent and unbiased manner at all times, with the decision to grant permission based on relevant policies and guidelines and the proper planning and sustainable development of the area. The PA acknowledges that the application should have been referred to the DHLGH for their comments.

7.0 Assessment

The principle of a permitted oyster farm and production facility which encompasses a wider site at this location, has been established for over three decades. In broad terms, the proposed development (with the exception of a 25m² extension to same), was previously permitted under planning reference 17/282, however permission expired prior to the completion of the permitted works. Furthermore, the development plan policies set out within Chapter 5 of the plan support local indigenous enterprises in general terms. In this context, I am satisfied that the proposed development is acceptable in principle, subject to compliance with normal planning considerations, including environmental considerations.

Having examined the application details and all other documentation on file, including the submission received in relation to the third-party appeal, the report of the local authority, having inspected the site, and having regard to the relevant local/regional/national policies and guidance, I consider that the substantive issues in this third-party appeal to be considered are as follows:

- Procedural/Legal Matters
- Justification on need for extension
- Appropriate Assessment Screening.

7.1. Procedural Matters

A number of issues were raised in the third-party appeal and the DHLGH with respect to procedural matters including the accuracy of plans & the content of the submitted Screening for Appropriate Assessment Report and that the planning process be fair and impartial in its decision making. Whilst I am concerned that a referral request was not sought by the PA during the application process to DHLGH, given the environmental sensitivities attributed to the site's immediate area and that the Department is a prescribed body, I am satisfied that the matters raised did not prevent concerned parties from making representations to this appeal. The response received by the Board from the DHLGH dated 31 January 2024 is noted in this regard.

7.1.1. Accuracy of Plans/Unauthorised Works

The planning history attached to the wider site (of which this site forms part) in regard to its use as an oyster farm and production facility is not refuted by any party. The DHLGH and third-party appellant however both raise concerns in regard to the making of a decision on this case prior to cessation of current investigations on planning enforcement matters associated with this site, which may affect this case. I note that the delineated site boundary shown on the site layout map is defined by the footprint of the extension works to an established building and that the remainder of the site, of which the proposed works are integral to (including the structure which the proposed extension will be attached to), lies outside of the red line/site boundary. In noting concerns of the appellant regarding inaccuracies in the plans submitted, I am of the view that the site layout map submitted and associated documentation is vague and somewhat misleading in terms of clearly detailing the extent of works, use(s) and services (incl. surface water proposals and confirmation on installation of upgraded wastewater system as previously permitted under the 2017 application) on this site and the manner in which the proposal integrates with established development (permitted or otherwise) within the overall site.

Whilst I concur with the applicant that unauthorised works and activity fall outside of the Board's remit insofar that they fall under Part 8 of the PDA, in my opinion, it is also relevant to note that the Board are the competent authority in making a determination on appropriate assessment in this case. In this context, I am of the view that the nature and siting of these unauthorised works which are integral to the overall site's development and directly associated with the oyster production facility, with which an extension to same is proposed under this application, is a baseline condition that requires full consideration in the context of the Board's screening for Appropriate Assessment. I will consider this matter further within Section 7.3 of this report which is informed by 'Template 2: Screening for Appropriate Assessment' which is appended to this report.

7.1.2. Previous Failures to Comply/Building Regulations

In noting concerns regarding the pattern of retention applications on this site, I am of the view that the proposed retention works which are the subject of this case are

substantially consistent with those which were already permitted under a parent application Pl. Ref. 17/282), with the exception of a 25m² extended area above what was permitted, and that the principle of the overall development and use on this site had the benefit of planning permission which dates back over three decades. In this context and in noting the extent of unauthorised works on this site currently, I am of the view that a refusal of permission solely on the grounds of previous failures to comply is not warranted. I am also of the view that arguments raised regarding justification for the non-completion of works are not relevant in this case, given that the proposed development is sought under Section 34 of the PDA and is not seeking an extension of the appropriate period of the parent permission (Pl. Ref. 17/282). Furthermore, the matters of concern raised in regard to compliance with Building Regulations fall outside of the Boards remit in deciding on this application.

This above assessment on procedural matters in this case represents my de novo consideration of all planning issues material to the proposed development.

7.2. Justification on need for extension

The appellant queries the support given to the need for the extension of the production shed and is of the view that the mapping contained within the site's aquaculture license shows no evidence of an increase in production. I note that the applicant in its submission to the Board on 17 June 2024 is clear in outlining that the proposed works are necessary to ensure compliance with evolving SFPA food hygiene regulations and refers to the extent of potential job losses and loss of export business in the event that permission is not granted.

In my view, given the planning history associated with the extension proposed, which was substantially permitted under 17/282 and the argument put forward by the applicant which outlines that the proposed extension works will enable the development of a modern and hygienic processing and packaging area required by regulations, I am of the view that the extension proposed is reasonable and acceptable in principle, subject to compliance with all other planning requirements.

7.3. Appropriate Assessment (AA) Screening

- 7.3.1 In accordance with Section 177U(4) of the Planning and Development Act 2000 (as amended) and on the basis of objective information, I conclude that based on the information available, the proposed development is likely to have a significant effect 'alone' on the qualifying interests of Carlingford Lough SPA (004078), notably Brent Goose [A046], with its conservation objective to maintain the favourable conservation condition of Light-bellied Brent Goose in Carlingford Lough SPA, as defined by population and distribution attributes and targets, and (2) Wetlands and Waterbirds [A999] with its conservation objective to maintain the favourable conservation condition of the wetland habitat in Carlingford Lough SPA as a resource for the regularly-occurring migratory waterbirds that utilise it, as defined by habitat area from effects associated with the proposed development and existing development works on this site.

The proposed development is also likely to have a significant effect 'alone' on Carlingford Shore SAC (002306), its qualifying interests include annual vegetation of drift lines [1210] and perennial vegetation of stony banks [1220] with its conservation objective in maintaining their favourable conservation condition in Carlingford Shore SAC, as defined by habitat.

It is therefore determined that Appropriate Assessment (stage 2) [under Section 177V of the Planning and Development Act 2000] is required on the basis of the effects of the project 'alone'.

[Refer: Template 2 - Screening for Appropriate Assessment which is appended to this report and informed this screening determination].

7.4 Conclusion

Whilst acknowledging the planning history attached to the proposed retention works sited within a wider site and the economic benefit, I submit that the development proposed must also accord with the provisions of Article 6(3) of the Habitats Directive. In light of this and based on available information and the determination reached in

relation to appropriate assessment, I submit that the Board is precluded from giving further consideration to a grant of planning permission.

8.0 Recommendation

I recommend that planning permission be refused for the following reasons and considerations.

9.0 Reasons and Considerations

1. The site forms part of an overall site which comprises an established oyster farm and production facility. On the basis of the information provided with the application and given the nature and siting of the proposed retention works, along the shoreline and with a direct hydrological connection to Carlingford Lough, the Board cannot be satisfied that the proposed development alone, or in combination with other plans or projects would not be likely to have a significant effect on the designated Carlingford Lough Special Protection Area (Site Code 004078) and Carlingford Lough Special Area of Conservation (Site Code 002306) in view of their conservation objectives. In these circumstances the Board is precluded from giving further consideration to a grant of planning permission. To permit the retention works proposed in this instance would be contrary to policy objectives NBG3 and NBG5 of the Louth County Development Plan 2021-2027 and would be contrary to the proper planning and sustainable development of the area.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Paula Hanlon
Planning
Inspector

28 June 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	318516-23		
Proposed Development Summary	Retention and Completion of partially constructed single storey extension (184m ²) which was previously permitted (PA Ref. 17/282) to the end of existing production building (474.00m ²) and additional production floorspace (c. 25m ²) to the southwest of the partially constructed extension.		
Development Address	Mullatee, Greenore Road (R176), Carlingford, Co. Louth.		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	X
		No	
2. Is the proposed development of a class specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) and does it equal or exceed any relevant quantity, area or limit where specified for that class?			
Yes			
No		X	Proceed to Q.3
3. Is the proposed development of a class specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) but does not equal or exceed a relevant quantity, area or other limit specified [sub-threshold development]?			
		Threshold	Comment (if relevant)
No			
Yes		X	Proceed to Q.4

4. Has Schedule 7A information been submitted?		
No	X	Preliminary Examination required
Yes		Screening Determination required

Inspector: _____ Date: _____

Form 2

EIA Preliminary Examination

An Bord Pleanála Case Reference	318516-23	
Proposed Development Summary	Retention and Completion of partially constructed single storey extension (184m ²) which was previously permitted (PA Ref. 17/282) to the end of existing production building (474.00m ²) and additional production floorspace (c. 25m ²) to the southwest of the partially constructed extension.	
Development Address	Mullatee, Greenore Road (R176), Carlingford, Co. Louth.	
<p>The Board carries out a preliminary examination [Ref. Art. 109(2)(a), Planning and Development Regulations 2001 (as amended)] of, at least, the nature, size or location of the proposed development having regard to the criteria set out in Schedule 7 of the Regulations.</p>		
	Examination	Yes/No/ Uncertain
<p>Nature of the Development</p> <p>Is the nature of the proposed development exceptional in the context of the existing environment?</p> <p>Will the development result in the production of any significant waste, emissions or pollutants?</p>	<p>The wider site is located along the shoreline of Carlingford Lough and has an established use in aquaculture. The site is unzoned. The proposed development is not exceptional in the context of existing environment.</p> <p>The proposed development will not result in the production of any significant waste, emissions or pollutants.</p>	No
<p>Size of the Development</p> <p>Is the size of the proposed development exceptional in the context of the existing environment?</p> <p>Are there significant cumulative considerations having</p>	<p>No. The delineated site area is 0.0184ha, with the overall site associated with this development 0.9ha. Whilst the use proposed is established on this site, there has been significant unauthorised development associated with aquaculture on the overall site in recent years</p>	No

regard to other existing and/or permitted projects?		
Location of the Development Is the proposed development located on, in, adjoining or does it have the potential to significantly impact on an ecologically sensitive site or location? Does the proposed development have the potential to significantly affect other significant environmental sensitivities in the area?	The proposed development is located within an overall site and established development that is partially contained within and is surrounded by Carlingford Lough SPA (004078) and pNHA (000542) and Carlingford Shore SAC (002306). I conclude that the matter of potential to significantly affect other significant environmental sensitivities in the area will be addressed under The Habitats Directive.	No
Conclusion		
<ul style="list-style-type: none"> • There is no real likelihood of significant effects on the environment. <p>EIA not required.</p>		

Inspector: _____

Date: _____

DP/ADP: _____ Date: _____

(only where Schedule 7A information or EIAR required)

**Template 2: Screening for Appropriate Assessment
Screening Determination**

Background

Under a previous permission (Pl. Ref. 17/282) and following a request for further information by the PA at application stage, the extension proposed (with the exception of 25m² additional production floorspace) formed part of a larger application on this site which was subject to Stage 2 AA and permitted by the Planning Authority. As previously stated, the site as delineated in this case solely encompasses the footprint of the retention works sought and it excludes the permitted production building, onto which the extension proposed for retention is sought, and all associated development contained within the overall site of Carlingford Oyster Company Ltd. at this location.

I note that the appellant refers specifically to the placement of hardcore into the SPA and SAC as part of the applicant's wider site. I also note that the Department in its submission to the Board is concerned about the potential granting of permission for the proposed application without taking account of potential adverse effects on the adjoining SAC and SPA which may have resulted or result from other unauthorised developments on the site.

The applicant's response to the Board (dated 20 December 2023 and 17 June 2024) which make reference to AA Screening exercises undertaken by the Marine Institute and the conclusions reached, in relation to the impacts of aquaculture on both Carlingford Lough SAC and Carlingford Shore SPA (2022) has been duly considered in this screening for appropriate assessment.

1: Description of the project

I have considered the proposed development for the retention and completion of a partially constructed single storey extension (permitted under Planning Authority Ref. No. 17/282 along with an additional 25m² of floor area) to the production building in light of the requirements of S177U of the Planning and Development Act 2000 as amended.

The site (stated area 0.0184ha) which forms part of an overall site associated with Carlingford Oyster Company (stated area 0.9ha) is located on the shores of Carlingford Lough and fronts onto the eastern side of the R176 Greenore Road at Mullatee approximately 2.2km south of Carlingford. The overall site of the established oyster farm and production facility has direct access to the shoreline and Carlingford Lough. Development works associated with this oyster farm and

production facility partially overlap and lie immediately adjacent to two European sites, notably Carlingford Shore SAC (002306) and Carlingford Lough SPA (004078).

The proposed development comprises the retention and completion of the following:

- partially constructed single storey extension (159m²) which was previously permitted (PA Ref. 17/282) to the south end of existing production building (474.00m²), with its principal dimensions being an overall height (4.8m), length (12.5m) and width (13m).
- Additional production floorspace (c.25m²) SW of the partially constructed extension which will facilitate the operation of two internal oyster grading lines.
- The external material finishes are proposed to match existing finishes on the main production building.

It is stated that the above works will enable the provision of a modern and hygienic processing and packaging area that is segregated from other coarser, natural detritus generated by the daily operations of grading and sorting oysters and is required by modern statutory food hygiene regulations.

Site Characteristics.

A Screening report (dated September 2023) submitted outlines that the site itself 'has no value in an ecological sense, being taken over by built structures and an artificial shoreline'. It also references that *'no parts of the adjacent shoreline have a natural strandline vegetation but offshore there is good habitat development of mudflats which are widely used by wintering birds'* and that *'ongoing aquaculture uses compacted trackways on the mudflats and avoids softer areas, some of which have eelgrass (Zostera) beds – the food of the brent geese'*.

The retention works sought are contained within an established and operative site which has been in existence at this location for a number of decades and I note that the applicant makes reference that the operational use of this site was in place prior to the designation of Carlingford Lough (SPA) and Carlingford Shore (SAC) as a Natura 2000 site(s). The established oyster farm and production facility of which the retention works sought under this application are integral to, has direct access to the shoreline and Carlingford Lough, with the footprint of the extension works sought in this application centrally located within this established site.

Prescribed Bodies

The Department in their referral submission to the Board are clear in outlining that the established commercial oyster farm is based on the lough itself, with the associated processing buildings and other infrastructure along the shoreline, with the application site therefore hydrologically linked to the SAC and SPA. The Department is also clear in expressing its concerns on the planning approach taken which

constitutes project splitting as unauthorised works were undertaken in recent years within the applicant's wider site which encroach on the SAC and SPA and states that these unauthorised works remain. The Department outlines that potential adverse effects on the adjoining SAC and SPA which may have resulted or result from other unauthorised works on the overall site is required prior to permitting the proposed development.

2: Potential impact mechanisms from the project

The AA Screening report (dated Sept. 2023) submitted on behalf of the applicant states that 'the Carlingford Lough sites' are the only relevant European sites in this case 'as they are linked directly to the presence of the new structures'. In my opinion, I concur with this statement and consider that there are no other European sites within the Zone of Influence. In determining the zone of influence, I have had regard to the nature and scale of the project, the distance from the development site to the European Sites, and any potential pathways which may exist from the site to a European Site. I also note that the PA in their assessment of the application was satisfied that the applicant demonstrated that the development will not have any significant effect, individually or in combination with other plans or projects, on any designated EU site and that a Stage 2 AA was not required. The PA in their assessment of likely significant effects refer to the works described, considered third party concerns regarding adjoining European sites and the content of parent permission (Pl. Ref: 17/282) which considered the environmental issues related to the extension of the existing factory building.

However, the proposed retention application which is the subject of this application cannot be separated out from the wider development (permitted or otherwise on the overall site of which the application forms part) in terms of undertaking screening for appropriate assessment. Whilst reference is made on behalf of the applicant to separate AA screenings undertaken on Carlingford Lough and that the conclusions reached in the submitted application align with same (being that aquaculture activities on the Lough are not having a significant effect on the conservation objectives of European Sites), I note that that the proposed retention works alongside established works (permitted or otherwise) on the wider, overall site have not been sufficiently assessed in this case to allow for the screening out of appropriate assessment. I concur with the Department that an examination of the likely significant effects of the retention works proposed in this case, requires consideration of all existing and established development located within the overall site. In this context, whilst the AA Screening document which accompanies this application describes development works which are not permitted on the applicant's overall site, including a visitor's centre, information and sampling room and outdoor terrace with viewing facilities, it is unclear whether the applicant has included these and all existing

development (permitted or otherwise) within the overall site and with which the development proposed is integral to, in its baseline conditions which informed its findings and the conclusion reached in its AA Screening document.

In considering the siting of the development proposed for retention and its integral relationship with existing operations and development on this site (permitted or otherwise), the project could generate impacts which uncontrolled might represent a risk to the achievement of the conservation objectives of the adjoining Carlingford Shore SAC (002306) and Carlingford Lough SPA (004078).

This may include direct impacts and indirect impacts, particularly in terms of species disturbance, during construction and operation stage when considered alongside increased levels of activity associated with adjoining works and operations on this site and habitat modification (surface water discharge) given the site's proximity to these European sites and with direct hydrological and ecological connections to same. In examining the documentation submitted, most notably Appropriate Assessment Screening (September 2023), I consider that insufficient consideration was given to the necessary baseline conditions associated with this site.

In regard to Carlingford Lough SPA, the Conservation Objectives for brent goose includes two attributes:

- Population trend: long term population trend should be stable or increasing
- Distribution: No significant decrease in the range, timing or intensity of use of areas by brent goose, other than that occurring from natural patterns of variation.

The Conservation Objectives supporting document (pg 6) notes that factors that can adversely affect the achievement of these targets are:

- Habitat modification: activities that modify discrete areas or the overall habitat(s) within the SPA in terms of how the listed species uses the site (e.g. as a feeding resource) could result in the displacement of the species from areas within the SPA and/or a reduction in numbers
- Disturbance: anthropogenic disturbance that occurs in or near the site and is either singular or cumulative in nature could result in the displacement of the listed waterbird species from areas within the SPA, and/or a reduction in numbers
- Ex-situ factors: the listed waterbird species may at times use habitats situated within the immediate hinterland of the SPA or in areas ecologically connected to it. Significant habitat change or increased levels of disturbance within these areas could result in the displacement of the listed waterbird species from areas within the SPA, and/or a reduction in numbers.

I submit that one field study (stated as being undertaken in September 2023) is insufficient and is not a reliable basis to screen out likely significant effects, with no

detailed assessment undertaken in the winter months, in this case, in relation to the qualifying interests of Carlingford Lough SPA (004078) and the potential disturbance of Brent Goose [A046] and Wetlands and Waterbirds [A999] which are regularly-occurring migratory waterbirds in the immediately adjoining SPA and which may be affected by development works on this site and its operations (including potential noise/lighting disturbance arising from on-site activity). Reference made within the applicant's screening for appropriate assessment report to the habitat of the brent goose having not been influenced by the onshore constructions which are above the level of the feeding area and wintering bird flocks becoming habituated to people on shore is not supported by any scientific information in this case. I further note that the applicant makes reference that birds live with the necessary aquaculture works, however the statement is not substantiated within the submitted documentation with this application.

In regard to the qualifying interests of Carlingford Shore SAC, notably Annual vegetation of drift lines and Perennial vegetation of stony banks, in the Conservation Objectives, favourable conservation condition is defined by specific attributes with associated targets. I note that no shoreline study was undertaken to demonstrate what habitats are/are not impacted. Also, there are no details provided with the submitted application in relation to surface water drainage/disposal (no design proposal or calculations provided) associated with the proposed development and there is no documentation provided which confirms that the existing on-site wastewater system was installed/is operational in accordance with previous permission attached to this site (required under Condition 7, Pl. Ref. 17/282) and the EPA Code of Practice, which are particularly relevant given that the site is hydrologically linked to this European Site. Whilst the submitted AA Screening Report which accompanies this application states that shingle and drift line habitats occur from Greenore to West of Cooley (i.e. south of development site), I note that under the 'Habitat area' and 'Habitat distribution' attributes that the NPWS have noted that current area and distribution of both QIs is unknown.

No Construction Management Plan accompanies the proposed development and potential risk(s) of surface water pollution and disturbance at construction stage has not been assessed or addressed as part of the application submitted and accompanying screening for appropriate assessment. Furthermore, the changing nature, area and extent of activities undertaken within the applicant's wider site, particularly in relation to the inclusion of ancillary development and rubble stone groins/hardcore with ecological and hydrological connections into the adjoining 2(no) European designated sites has not been assessed for appropriate assessment.

Therefore, in the absence of sufficient consideration of baseline conditions and given that there is no evidence provided to support the conclusion reached, and in particular, in regard to the conservation objectives of the adjoining two European

sites, I have serious concerns that the proposed retention works which are integral to overall works and activity in the applicant's wider site may have direct and indirect impacts on Carlingford Shore SAC (002306) and Carlingford Lough SPA (004078).

3: European Sites at risk

In terms of Carlingford Shore SAC (002306), its qualifying interests include annual vegetation of drift lines [1210] and perennial vegetation of stony banks [1220] with its conservation objective in maintaining their favourable conservation condition in Carlingford Shore SAC, as defined by habitat.

In terms of Carlingford Lough SPA (004078), its qualifying interests include (1) Brent Goose [A046] and its conservation objective is to maintain the favourable conservation condition of Light-bellied Brent Goose in Carlingford Lough SPA, as defined by population and distribution attributes and targets, and (2) Wetlands and Waterbirds [A999] with its conservation objective to maintain the favourable conservation condition of the wetland habitat in Carlingford Lough SPA as a resource for the regularly-occurring migratory waterbirds that utilise it, as defined by habitat area.

In the absence of consideration of all baseline conditions, the proposal is likely to have significant effects, particularly in terms of species disturbance (SPA) and habitat deterioration (SPA and SAC).

4: Likely significant effects on the European site(s) 'alone'

I conclude that in examining the nature and extent of the development proposed and in the absence of sufficient consideration of baseline conditions (including impacts of unpermitted development within the wider site), it is not possible to exclude likelihood of significant effects. The proposed development would have a likely significant effect 'alone' on the qualifying interests of Carlingford Lough SPA (004078), notably Brent Goose [A046] and its conservation objective to maintain the favourable conservation condition of Light-bellied Brent Goose in Carlingford Lough SPA, as defined by population and distribution attributes and targets, and Wetlands and Waterbirds [A999] with its conservation objective to maintain the favourable conservation condition of the wetland habitat in Carlingford Lough SPA as a resource for the regularly-occurring migratory waterbirds that utilise it, as defined by habitat area from effects associated with the proposed development and existing development works on this site. Furthermore, the proposed development is also likely to have a significant effect 'alone' on Carlingford Shore SAC (002306), its qualifying interests which include annual vegetation of drift lines [1210] and perennial vegetation of stony banks [1220] and with its conservation objective in maintaining their favourable conservation condition in Carlingford Shore SAC, as defined by habitat.

An appropriate assessment is required on the basis of the effects of the project 'alone' on European Sites. An appropriate assessment is required on this basis of the effects of the project 'alone'. Further assessment in-combination with other plans and projects is not required at this time. **Proceed to AA.**