



An
Bord
Pleanála

Inspector's Report

ABP-318836-24

Development

Planted screening berms in proximity to the practice putting green and club house, an accessway through the berms, a water storage tank and associated site works, boundary fencing along dunes.

Location

Clooney, Portnoo, Co. Donegal

Planning Authority

Donegal County Council

Planning Authority Reg. Ref.

23/51559

Applicant(s)

Liam McDevitt

Type of Application

Retention permission

Planning Authority Decision

Refusal

Type of Appeal

First Party -v- Decision

Appellant(s)

Liam McDevitt

Observer(s)

Dermot Quinn on behalf of Narin &
Portnoo Community Action Group
Frankie Campbell
Narin & Portnoo Golf Club

Kate Morgan
Ronan O Murchu
Alun & Kathleen Evans
John Moore & Others
Paula Harvey
Nicholas Cavan North
An Taisce

Date of Site Inspection

20th March 2024

Inspector

Hugh D. Morrison

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1.0 Site Location and Description

- 1.1. The site is located to the east of the settlement of Portnoo/Narin. This settlement is served by the R261, which runs west from the N56, and north from Ardara, 8.6km away, and by the local road network (L2413). It lies beside the sea.
- 1.2. The site encompasses the Narin and Portnoo Golf Links, which extends over c. 64 hectares. This site is accessed from the west off the L2413 via a shared access road with the neighbouring static caravan park. This road terminates in a car park, which is adjacent to the clubhouse, and the golf course stretches out to the east and to the north-east.
- 1.3. The site comprises relatively flat and undulating topography. It is bound to the north-west by the sweep of Tramore Strand, where it is elevated above sand dunes. It encircles a headland at Carrickladda at its north-eastern extremity and returns to the east, near to Castlegoland Beach, and to the south-west, where it abuts a stream which flows from Clooney Lough to Castlegoland Beach, which is known as Clooney_38 Stream.
- 1.4. A secondary access to the site is available off a single lane cul-de-sac, which runs north from the L-7543-2. A lane from the head of this cul-de-sac runs along the south-western corner of the site to serve both Castlegoland Beach and a new site maintenance depot, which is largely enclosed within a hollow in the landscape. An old site maintenance depot occupies a more exposed position to the west of the new one. The lane has recently been the subject of a High Court order that recognises its status as a public right of way for pedestrians and vehicles passing to and from the cul-de-sac and Castlegoland Beach.

2.0 Proposed Development

- 2.1. The proposal seeks retention permission for the following items:
 - Construction of planted screening berms, over 2m in height, in an area formerly used for car parking in proximity to the practice putting green and clubhouse.
 - An accessway through the berms, on land formerly part of the car park.

- The erection of a water storage tank and associated site works within the maintenance storage yard in the centre of the course. The water tank will be supplied primarily from the existing water main within the course and from a future rainwater harvesting system supplied from the gutters on the roof of the adjoining maintenance shed. This supply will substitute for the present supply from the extraction source approved in 2004.
- The erection of boundary fencing along dunes to the north-western tip of the course, in an area designated in the County Donegal Development Plan 2018 – 2014 as especially high scenic amenity.

2.2. At the appeal stage, the applicant advised that the fence, which is the subject of the fourth bullet point above, has been dismantled, and so it no longer forms part of his proposal.

3.0 Planning Authority Decision

3.1. Decision

Permission was refused for the following reasons:

1. The site is located on open and exposed coastal lands, which the County Development Plan designates as an area of especially high scenic amenity. Policies NH-P-8 & 9 are cited. The proposed retention of the boundary fence along the dunes in the north-western tip of the golf course would be highly obtrusive, and it would detract from the natural character of the area in the following respects:
 - *The visual dis-amenity of the said development and ridged extent of the same.*
 - *The lack of the contribution of the development to strengthen and improve the physical environment of this coastal landscape on unspoilt lands.*
 - *An unacceptable level of separation from the adjoining coast to enable safe access and protection to the adjoining SAC.*
 - *Would result in a poor precedent along the full extent of the golf course.*

The fence would be a discordant and sub-standard form of development, on its own, and in the precedent that it would establish. It would materially contravene the above cited policies and be contrary to the proper planning and sustainable development of the area.

2. The site is partially within and directly adjoining the West of Ardara/Maas Road SAC. Objectives NH-O-2 & 3 and Policy NH-P-1 of the Development Plan are cited. The PA's screening exercise concludes that the likelihood of a significant effect from the development on the SAC cannot be excluded. No NIS was submitted, and so to grant retention permission would materially contravene the above cited objectives and policy and be contrary to the proper planning and sustainable development of the area.
3. The site contains recorded monuments. Policy AH-P-5 of the Development Plan is cited. The PA is not satisfied that the development undertaken has not had a negative impact on the integrity of these sites, and the preservation of archaeological remains in the area. To grant retention permission would materially contravene the above cited policy and be contrary to the proper planning and sustainable development of the area.

3.2. Planning Authority Reports

3.2.1. Planning Reports

See reasons for refusal.

3.2.2. Other Technical Reports

- Roads: Conditions requested with respect to €5000 financial contribution to cover the cost of temporary repairs already incurred, and €45,000 special development charge to cover the cost of reinstatement of local road (L-7543-2).

3.3. Prescribed Bodies

In relation to the current application:

- DoHLGH (Archaeology): Attention is drawn to a recorded monument within the site, i.e., DG064-004 – midden. Archaeological Impact Assessment requested.

In relation to its predecessor 23/50097:

- DoHLGH (Nature conservation): Attention is drawn to the European site that surrounds and overlaps with the site. The fencing for retention lies partially within this site. Concern is expressed over the extraction of water from the stream, which flows from the Clooney Lough. The submitted Stage 1 screening exercise is inadequate.
- An Taisce: Advises that the submitted Stage 1 screening exercise is inadequate. Thus, e.g., insufficient evidence is presented to conclude that the fencing for retention is not having a significant impact upon the sand dunes, and the DoHLGH's water extraction concern is reiterated. The screening exercise is silent on the materials comprised in the berms for retention of where it was sourced. Consequently, there is insufficient information to substantiate the screening exercise's conclusion. Furthermore, the fencing for retention may obstruct a public right of way to Castlegoland Beach.

3.4. Third Party Observations

See observers' comments.

4.0 Planning History

- 03/2890: Clubhouse and car park: Permitted.
- 05/2004: Retention of water storage tank, pumphouse, and all associated site works: Permitted by the PA, subject to the following conditions:
 - 1.(i.) Prior to re-commencement of extraction of water from Clooney Lough, a flow meter shall be installed to confirm extraction rates.*
 - (ii.) A maximum extraction rate of 10,000 litres per day over a maximum of 4 days shall be permitted.*

(iii.) Other extraction rates either lesser / greater than 10,000 litres per day over any other period greater or less than 4 days shall be notified in writing to the National Parks & Wildlife Service (Northern Region), Glenveagh National Park.

(iv.) Conditions (i.) – (iii.) above may be reviewed and / or terminated by the National Parks & Wildlife Service by 3 working days notice in writing to the Honorary Secretary of Naran & Portnoo Golf Club.

Reason: In the interests of environmental protection.

2. The mound surrounding the tank shall be increased to a height of 2.7m over the entire area depicted on the site layout plan submitted on 10/01/05.

Reason: In the interests of visual amenity.

However, the PA's decision was appealed by An Taisce (PL05B.211489).

Permission was granted by the Board without the above cited Condition No. 1, but with the following Condition No. 1 and explanatory note:

The development the subject of the application comprises the retention of water storage tank, pump house and all associated site works. This grant of permission is for the retention of the structures specified above within the boundary of the site as shown on drawings submitted with the application but, for the avoidance of doubt, the development hereby permitted to be retained does not include the abstraction of water from any source, the conveyance of such water, the construction of pipelines over or under land nor the provision of any services outside the boundary of the site.

Reason: To clarify the nature and extent of the development hereby permitted.

The Board note that the planning application and public notices did not refer to the abstraction of water or laying of pipes nor does the application contain any particulars in relation to such matters. Accordingly, it considered that its decision must be confined to matters that are the subject of the application and it would not be appropriate to attach conditions relating to the abstraction of water.

- S5GS0502 & 05B.RL2252: Referral to the Board concerning site excavation works to accommodate regrading and alteration to golf course layout: These works were deemed to be development, which is not exempted development.

- 06/31361: 2 no. fairways, 2 no. greens, 3 no. tees, and 2 no. interconnecting accesses between holes Nos. 14 & 15 (one for pedestrians and one for maintenance), and all associated site works: Permitted.
 - 07/31515: Alteration and extension to clubhouse: Permitted.
 - 18/50855: Construction of a new golf course maintenance equipment storage building with associated site works, including a proprietary packaged sewerage treatment unit and percolation area: Permitted.
 - S5 19/23: Referral with respect to fencing. Held that it is development, which is not exempted development.
 - S5 19/25 & ABP-306362-20: Whether (A) ground excavation and (B) the cultivation, harvesting and replanting of Marram Grass constitutes development that is or is not exempted development. Held that both are development with A being exempted development and B not being exempted development.
 - S5 22/40 & RL05E.315560: Whether the reconfiguration of golf course (location of new tee) and associated orientation play is or is not development or is or is not exempted development. Held that it is development, which is exempted development.
 - 23/50097: Retention permission sought for:
 - (1) Planted screening berms, over 2m in height, in an area formerly used for car parking in proximity to the practice putting green and clubhouse.
 - (2) An accessway through the berms on land formerly part of the car park.
 - (3) A water storage tank and associated site works within the maintenance storage yard in the centre of the course.
 - (4) Amendments to the golf course equipment shed approved under 18/50855, including the provision of additional floor area of 159 sqm and fenestration modifications.
 - (5) Boundary fencing along the dunes to the north-western tip of the course.
- Split decision: Item (4) granted, and remaining items refused for the same reasons as the first and second reasons cited for refusing the current

proposal. The permission thus granted was subject to conditions, including the following one:

3(a) Within one month of the date of the notification of final grant the following shall be removed from the subject site:

(i) The mobile catering unit located on the site within the car parking area.

(ii) All electric fencing and associated posts and ancillary equipment.

(iii) The gate and associated steel posts located north of where the public road terminates (L-7543-2) and shall be kept free of obstruction for a radius of 15m within the subject site.

(iv) The teeing ground/tee box which directly adjoins the L-7543-2 shall be removed. No direction of play shall be permitted from the same over the adjoining public road L-7543-2.

Reason: To define the permission and in the interest of orderly development.

Two enforcement notices (UD18260) dated 13th December 2023 were served on the applicant. Notice A refers to, amongst other things, non-compliance with Condition 3(a)(iii) attached to permitted application 23/50097, and Notice B refers to, amongst other things, Items (1), (2), (3) & (5) of application 23/50097 the retention of which was refused.

5.0 Policy Context

5.1. Development Plan

Under Map 7.1.1 of the County Donegal Development Plan 2018 – 2024, the site is shown as being within an especially high scenic amenity area where it interfaces with the coastline. Elsewhere, it is shown as being within a high scenic amenity area.

Under Table 15 of Appendix 3 of the Development Plan, Item 30 identifies a public right of way to Castlegoland Beach.

Under the Historic Environment Viewer, two recorded monuments are shown as lying within the site, i.e., a standing stone (DG064-008) in its south-western corner, and a midden (DG064-004) towards its centre.

Under the NPWS Map Viewer, the West of Ardara/Maas Road SAC & pNHA (000197) are shown as abutting the site. They are also shown as overlapping with this site along the coastline in its western portion and in its north-eastern portion and in the vicinity of Clooney Lough towards the centre of its southern boundary.

Under the PA's reasons for refusing retention permission to the current proposal, the following policies and objectives of the CDP were cited:

NH-P-8

It is the policy of the Council to safeguard the scenic context, cultural landscape significance, and recreational and environmental amenities of the County's coastline from inappropriate development.

NH-P-9

It is the policy of the Council to manage the local landscape and natural environment, including the seascape, by ensuring any new developments do not detrimentally impact on the character, integrity, distinctiveness or scenic value of the area.

NH-O-2

To comply with Article 6 of the Habitats Directive (92/43/EEC) and have regard to the relevant conservation objectives, management plans, qualifying interests and threats to the integrity of Natura 2000 sites.

NH-O-3

To maintain the conservation value of all existing and/or proposed SACs, SPAs, NHAs and RAMSAR sites including those plant and animal species that have been identified for protection under the EU Habitats Directive (92/43/EEC), EU Birds Directive (79/409/EEC as amended by 2009/147/EC), the Wildlife Acts (1976-2014) and the Flora Protection Order (2015).

NH-P-1

It is a policy of the Council to ensure that development proposals do not damage or destroy any sites of international or national importance, designated for their wildlife/habitat significance in accordance with European and National legislation including: SACs, Special SPAs, NHAs, Ramsar Sites and Statutory Nature Reserves.

AH-P-5

It is the policy of the Council to protect and preserve archaeological sites, their characters and settings which have been identified subsequent to the publication of the Record of Monument and Places.

5.2. Natural Heritage Designations

- West of Ardara/Maas Road SAC & pNHA (000197)
- Inishkeel SPA (004116)

5.3. EIA Screening

See Appendix 1.

6.0 The Appeal

6.1. Grounds of Appeal

The applicant begins by reviewing application 23/50097, which provides the backdrop to the current application. He draws attention to local concerns over a contested public right of way to Castlegoland Beach and Condition 3(a)(iii) attached to the retention permission granted to application 23/50097. Both of these issues are separate from the current application.

Assessment by the PA

- The DoHLGH (Archaeology) drew attention to a recorded monument on the site, i.e., a midden. However, this site is not in the vicinity of the works, which are the subject of the application. The PA's third reason for refusal is, therefore, indefensible.
- While most of the submissions from the public raise objection, one, bearing 300 signatures, expresses support.
- The case planner discusses the alleged public right of way issue, before setting it to one side as being separate from the current application. A photo

of the contested gate is submitted, which was taken in 2010, and members of the golf club recall a gate being *in-situ* since at least 1964.

- The original water tank was permitted under application 05/2004. It wore out and a permanent replacement one was installed beside the maintenance building with water continuing to be pumped/piped from Lough Clooney to it. These arrangements were the subject of application 23/50097. However, under the current application, the new tank would be supplied from the public water mains that serves the maintenance building. (Rainwater harvesting from the roof of this building would supplement this supply). The previous arrangements can thus be de-commissioned.
- The applicant states that “The berms consist of sand supplied from elsewhere within the course upon which was placed marram grass harvested a few years ago from elsewhere within the course.” He also states that the source area has regenerated, and the relocated marram grass on the berms is now established.

Alternative assessment to that of the PA

- The berms are sited on a former overflow car park, i.e., a brownfield site, which is remote from and unconnected to the West of Ardara/Maas Road SAC, i.e., no appropriate assessment issues arise. These berms provide a natural screen between the golf course and the neighbouring caravan site. The site owner welcomes them as a barrier against the elements, and the PA raises no objection to them on the grounds of visual amenity.
- Under application 18/50855, a maintenance building (368.7 sqm) was permitted. This building was screened out for appropriate assessment by the PA for the following reasons:

The fact that the development will not result in any direct loss or fragmentation of habitats from the aforementioned Natura 2000 site,

The nature and small scale of the proposed development,

The fact that the subject site is a brownfield site where the principle of a golf course is long established, and

The scale and extent of existing development in the area.

These reasons apply equally to the current application.

- The applicant reiterates the revised water supply arrangements for the water tank, which overcome the PA's concerns as to water extraction from Clooney Lough. This tank is discretely sited, unlike the original water tank, and so it is compatible with the visual amenities of the area.
- The fence proposed for retention around the north-western tip of the golf course has been vandalised, and the PA takes exception to it on visual amenity grounds. The applicant has thus removed this fence, and he no longer wishes it to be part of the current application.

Screening for Appropriate Assessment

- Parallels between the screening of application 18/50855 and the current application are reiterated. The conclusion of the applicant's screening report is re-presented. The reasons for this conclusion not to proceed with a NIS are as follows:
 - *The project is not directly connected to the management of any European sites.*
 - *The project alone or in combination with other plans and projects is not likely to have significant effects on any habitats or species for which a European site was designated.*
 - *Negative impacts from the project are not foreseen on species or habitats for which European sites have been designated.*
 - *Therefore, the construction of the water tank, berms, the access between them, and the fencing would not have needed a Stage 2 Appropriate Assessment.*

6.2. Planning Authority Response

The majority of matters raised in the applicant's grounds of appeal were addressed in the case planner's report. The following comments are, however, made:

- An archaeological impact assessment was not requested, under further information, as there were other insurmountable reasons for refusal.
- The revised water supply arrangements could, if the Board is minded to grant, be conditioned.

- New information about the make-up of the berms is now available, and it can be considered in the Board's appropriate assessment.
- Reference is made to permitted application 07/31515. The visual acceptability of what was permitted under this application does not necessarily transfer across to the berms, proposed for retention, as the policy context has changed in the interim.

6.3. Observations

(a) Dermot Quinn on behalf of Narin & Portnoo Community Action Group

Supports the application and the improvement of the golf course, which is an important tourist attraction.

- The berms blend in, and they enhance the appearance of the site when viewed from the clubhouse. They also screen and shelter the neighbouring caravan site.
- The water tank is essential for the maintenance of the golf course, and it is discretely sited.
- The gate, which has been removed from the end of the L-7543-2, should be reinstated in order to control livestock and prevent unauthorised access.

(b) Frankie Campbell

The observer is the custodian of the neighbouring caravan site. The berms afford shelter, and they screen the caravans from noise and light pollution. They also afford privacy to caravaners, none of whom has complained about them.

(c) Narin & Portnoo Golf Club

The Golf Club formerly owned the golf course, prior to its sale in 2018 to the applicant. It, therefore, feels that it is in a relevant position to comment.

- The portion of the site occupied by the clubhouse, car park, and putting green is relatively flat, and so not in keeping with the surrounding topography. The two berms are a corrective, as they appear natural. "They have been constructed using sand that was excavated during the course renovations and

covered primarily with marram grass which was harvested from within the course boundary.” Neighbouring caravaners have no issues with these berms.

- The replacement water tank compares favourably both in terms of its appearance and visibility. It is fed directly from the water mains, so obviating the need to draw water from Clooney Lough.
- The berms and water tank are visual improvements that raise no environmental issues.

(d) Kate Morgan

- Given the similarity of the current application to its predecessor 23/50097, is the applicant entitled to make what is effectively a repeat application for retention permission?
- Contrary to the applicant’s contention, the site overlaps with the West of Ardara/Maas Road SAC to the north-west and the north-east. The former overlap has led to the encroachment of the golf course into dunes/beach, and the latter overlap includes part of the Clooney_38 stream, which is an otter habitat.
- What happens on lands surrounding the SAC can affect its qualifying interests. And yet the applicant’s screening exercise fails to address, e.g., where the materials for the berms came from, and where water used to irrigate the links is abstracted from.
- Attention is drawn to the Section 34(12) of the Planning and Development Act and the Board’s declaration on ABP-306362-20, i.e., where the PA needs to undertake appropriate assessment, retention permission cannot be granted.
- The observer identifies alleged unauthorised developments on the site, which include developments comprised in the current application. She expresses the view that the applicant is “salami slicing” these developments by failing to submit a comprehensive application for their regularisation.
- The observer reports that, contrary to the applicant’s stated position, sand and marram grass for the berms were removed from Castlegoland Beach and transported along the L-7543-2, which was damaged in the process. She further reports that the portion of the Beach thus affected was potential

Atlantic Salt Meadow, a qualifying interest of the SAC. This portion of the Beach has yet to recover, and it may not do so. It was also the subject of hydro-seeding with non-native grass species. She states that the sand and marram grass in question should be restored under ecological supervision to Castlegoland Beach.

- The observer reports that the applicant fenced-in 6 acres of Castlegoland Beach and he claims that this area should no longer be within the SAC. The fence was subsequently removed by the public.
- The observer reports that the applicant operates an irrigation and sprinkler system, which abstracts water from the Clooney_38 Stream. No licence has been obtained for this abstraction, and its effect on otters, a qualifying interest of the SAC, has not been assessed.
- The observer welcomes, in principle, the applicant's proposed future reliance upon the public water mains. Confirmation is needed that there is sufficient capacity for such supply to be sustained, e.g., during droughts. Any impacts from the use of chlorinated water should be assessed, and all the existing apparatus used in the current abstraction from Clooney_38 Stream should be removed.
- Not all of the 4-strand electric fence has been removed, it all should be.
- The gate and gateposts at the end of the L-7543-2 are to be removed under Condition 3(a)(iii) attached to the permission granted to application 23/50097. This gate lies on the route of a public right of way to Castlegoland Beach. Whereas there was formerly a gate on this route it was not locked. The denial of access to this Beach has caused considerable distress within the local community.

(e) Ronan O Murchu

Attention is drawn to the Section 34(12) of the Planning and Development Act and the Board's declaration on ABP-306362-20, i.e., where the PA needs to undertake appropriate assessment, retention permission cannot be granted.

The observer recounts the recent planning history of the site, and he expresses the view that the applicant is "salami slicing" his developments by failing to submit a

comprehensive application for their regularisation. He draws particular attention to the 4th tee as an example of unauthorised development.

The observer critiques the applicant's grounds of appeal as follows:

- Page 1: Conditions attached to the permission granted to application 18/50855 have been breached.
- Page 2: The current application does not encompass all the applicant's developments, and so the opportunity to assess the modernisation of the golf course "in the round" is being denied.
- Page 3: The history of the site is recounted, and the consequent possibility of widely dispersed archaeological remains is unacknowledged by the applicant. The partial excavation of the Old Castlegoland Road by the applicant revealed patterned stonework, which was removed before its archaeological significance could be assessed.
- Pages 4 & 5: The gate referred to has recently been removed under a court order to do so.
- Page 6: Attention is drawn to the recent, naturally occurring, realignment of the Clooney Stream, which has revealed a stratum of clay beneath wind-blown sand. Thus, former arable land may have been covered quickly, illustrating the potential for archaeological remains.
- Page 7 (and Pages 11 & 14): It is not the water tank *per se*, which is a cause for concern, but the extraction of water from a protected waterway, and the pumps and pipework that facilitates the same. Insofar as the maintenance shed has been constructed in breach of relevant conditions, it is unauthorised, and so the water mains serving this shed cannot be relied upon as an alternative water source for the water tank. In any event, its physical ability to do so is questioned.
- Page 8: The observer reports that sand and marram grass from Castlegoland Beach were excavated over two winters to a depth of 2m for the purpose of forming the two berms and the 4th tee. This Beach has not recovered, and hydro-seeding has failed. The marram grass should thus be restored to it.

- Page 9: The observer refers to a possible alteration to the SAC boundary to reflect the mean high-water mark on Castlegoland Beach. However, this alteration has not been confirmed legally, and so the original SAC boundary with the golf course continues to pertain.
- Page 10: The berms *per se* are not of concern, it's the source of the materials of which they are composed that is the issue and the damage wrought to Castlegoland Beach.
- Page 11: The fence in question has yet to be fully removed.
- Page 15: The applicant's ecologist does not appear to know of where the sand and marram grass in the berms were sourced. Thus, no assessment of the impact on Castlegoland Beach has been undertaken. Likewise, no assessment of the impact of water extraction from the Clooney Stream has been undertaken.
- Page 17: Any cumulative effects are not assessed.

(f) Alun & Kathleen Evans

The observers have re-submitted their original letter of objection to the PA, as they consider that its contents continue to be valid.

- The berms, the accessway through them, and the fencing around the north-east tip of the site were all previously refused retention permission. No material changes in planning circumstances have occurred since application 23/50097 and so they should be refused again.
- The observers report that sand and marram grass were removed from Castlegoland Beach to form the berms.
- The applicant does not draw water from Clooney Lough anymore. However, he does draw water from Clooney_38 Stream. Insofar as he now proposes to feed the water tank by means of an existing pipe "between the clubhouse and the old shed" fed by Irish Water, he has failed to demonstrate that this means of supply would be adequate. The observer expresses concern that, during periods of drought, such supply would need to continue to be augmented by the Clooney_38 Stream. The applicant refers to rainwater harvesting from the

maintenance shed roof but provides no details. Likewise, the impact of using chlorinated water, which would ultimately reach the SAC, is not assessed.

- Notwithstanding Condition 3(a)(ii) attached to the permission granted to application 23/50097, the 4-strand electric fence has not been removed. This fence is visually intrusive, potentially dangerous, and its route encroaches into the SAC.

The observers comment on the blocking of a contested public right of way to Castlegoland Beach by the applicant, and the particular risks posed to sensitive ecological areas by golf course developments.

The observers critique the applicant's planning report as follows:

- The importance of the golf course and local beaches as visitor attractions should be emphasised, and hence unimpeded access should be available to the latter.
- The sand dunes that are fenced off do not show signs of erosion from "footfall", and so the need for the fence has not been established.
- Visual assessments appear to be made from within the site rather than from points external to it.

The observers also critique the applicant's screening statement as follows:

- Works within the SAC, e.g., part of the fence line, have not been assessed.
- The conclusion fails to assess the cumulative impact of all of the applicant's developments.

(g) John Moore & Others

- Attention is drawn to the recent High Court case (HC Rec. No. 2023/316MCA) taken against the applicant, which ruled that public access to Castlegoland Beach must be restored by the removal of a gate and fencing.
- Abstraction of water from Clooney Lough failed, due to it becoming silted-up, and the abstraction of water from Clooney_38 Stream is unmetered.

- The golf course requires the continuous pumping of water during summer months to remain irrigated. In this context, the proposed rainwater harvesting would contribute little.
- The constant mowing of marram grass on the golf course has caused the dunes to become unstable and loose height. If such mowing continues, the dunes will be degraded, as is evident across the bay at Dooey Beach.

(h) Paula Harvey

- Attention is drawn to the recorded monument on the site, i.e., a midden (DG064-004), which is identified centrally within the site, and yet the remains from which may be scattered widely in the dunes. Attention is also drawn to archaeological remains that have been discovered in the dunes over the years by archaeologists and local historians. The case planner's report cites the advice of the DoHLGH, which anticipates the submission of an archaeological impact assessment prior to a decision upon the application. In the absence of such an assessment, the applicant's assertion that because the subject development is not beside the recorded monument archaeological remains are not relevant, cannot be substantiated.
- The applicant states that sand for the berms was sourced within the site. No archaeological assessment has been undertaken of the portions of the site thus affected.
- The observer reports that marram grass for the berms was sourced from Castlegoland Beach, again, without any archaeological assessment or any regard for the effect on the dunes.
- The observer also reports that works on the Old Castlegoland Road exposed pattern stonework, which was removed without any archaeological assessment. Furthermore, the natural realignment of the local stream has exposed a stratum of clay beneath wind-blown sand. Thus, former arable land may have been covered quickly, illustrating the potential for archaeological remains.

(i) Nicholas Cavan North

- The planning history of the site is recounted, and parallels are drawn with the recent planning history of the former Lake House Hotel with which the applicant is also involved. The OPR advises that “retention permission” is intended for cases within which genuine mistakes have been made. The observer does not consider that this is the case in these instances.
- The applicant refers to the services of a professional course designer, and yet no overall masterplan has been submitted for the golf course. Instead, a “salami slice” approach to the regularisation of development is occurring.
- Most of the works in question were undertaken in 2019. The submitting screening report is dated September 2023, but appears to be based on a site visit in February 2021. These lapses in time militate against a proper assessment.
- Contrary to references in the applicant’s planning report, water is no longer abstracted from Clooney Lough, as it is too silty. Instead, it is abstracted from the Clooney_38 Stream, without an extraction licence.
- Contrary to references to the water tank being fed from the water mains, to date it is being fed from the Clooney_38 Stream.
- Contrary to the applicant’s account of where the sand and marram grass were sourced, the observer reports that it was from Castlegoland Beach, which has not recovered. No appropriate assessment was undertaken of this removal. The Board determined, under ABP-306362-20, that it required planning permission.
- References to the berms being pollinators and a haven for hares are without foundation.
- While some fencing has been removed, a substantial proportion of fencing remains *in-situ*.

(j) An Taisce

- While the observer supports the PA’s refusal, it considers that the reasons cited are inadequate.

- The site is partially within and directly adjoining the West Ardara/Maas Road SAC.
- There is a lack of information as to the source of the material comprised in the screening berms.
- The site lies within an area of especially scenic amenity, which is open and unfenced. Nevertheless, complaints have been made about obstruction to public access.
- The applicant has not addressed the archaeological site (DG064004) within its site.
- The current proposal was previously refused by the PA under application 23/50097. The case planner expressed the view that appropriate assessment was necessary. In this respect, he/she referenced the impact of fencing on sand dune or machair habitats, the extraction of water from Clooney_38 Stream and its impact upon Clooney Lough and its slender naiad (qualifying interests of the above cited SAC), the amount of such extraction, and its implications for improved water status. A remedial Natura Impact Study (rNIS) would thus be needed.

6.4. Further Responses

None

7.0 Assessment

7.1. I have reviewed the proposal in the light of the County Donegal Development Plan 2018 – 2024, relevant planning history, the submissions of the parties and the observers, and my own site visit. Accordingly, I consider that this application/appeal should be assessed under the following headings:

- (i) Legalities,
- (ii) Landscape and visual impacts,
- (iii) Archaeology,
- (iv) Access,

(v) Water, and

(vi) Appropriate Assessment.

(i) Legalities

- 7.2. The observers raise several legal matters in connection with the current application. I will summarise each of these matters and respond to them in turn.
- 7.3. The OPR is cited as advising that “retention permission” is intended for cases where a genuine mistake has been made by the applicant in not applying for planning permission. Observer (i) expresses the view that the current proposal is not an example of such a case.
- 7.4. I have not been able to find the citation attributed to the OPR. While I understand that the cited intention may lie behind the retention permission provision in the Planning and Development Act, 2000 – 2023, the validation of an application for retention permission does not entail any exploration as to why planning permission was not sought in advance of development.
- 7.5. The applicant has not submitted a masterplan for its proposed improvements to the golf course. The view is expressed that the developments cited in the current application are not the only unauthorised developments that need to be the subject of retention permission. The view is also expressed that the limited extent of the current application negates the opportunity to assess cumulative impact.
- 7.6. The applicant refers to advice that he has received from professional golf course designers. Observer (i) appears to have deduced from this reference that a masterplan for the golf course must exist and so should accompany the current proposal. I am not in a position to either accept or reject this deduction, and so I am not in a position to request the submission of a masterplan that may or may not exist.
- 7.7. Observer (d) submits a list of alleged unauthorised developments, which she attributes to the applicant. Observer (e) reiterates one of these developments, i.e., the provision of the 4th tee. The provision of this tee was the subject of S5 22/40 and RL05E.315560, under which the Board concluded that it was development, which is exempted development.
- 7.8. Several other items from observer (d)’s list appear to have been the subject of Section 5 applications, i.e., S5 19/23, which related to fencing, which was held to be

development, which is not exempted development, and S5 19/25 and ABP-306362-20, which related to (A) ground excavation and (B) the cultivation, harvesting and replanting of Marram Grass: both were held to be development with the former deemed to be exempted development but not the latter.

- 7.9. The current application was preceded by a similar application 23/50097, which was the subject of a split decision. Under this decision, the PA granted retention permission for amendments to the golf course equipment shed approved under 18/50855, including the provision of additional floor area of 159 sqm and fenestration modifications. It refused the four items, which are the subject of the current application.
- 7.10. Observer (d) has appended copies of enforcement notices UD18280 A & B to her observations. The former notice addresses alleged breaches of conditions attached to the above cited retention permission, while the latter notice addresses alleged unauthorised developments, including those which are the subject of the current application. The alleged unauthorised developments cited in these enforcement notices and those on observer (b)'s list overlap.
- 7.11. The current application was received by the PA on 16th October 2023 and the enforcement notices are dated 13th December 2023. Accordingly, this application pre-dates these enforcement notices, and so it appears to be a response to the earlier refusal of retention permission rather than their service.
- 7.12. As planning enforcement lies outside the Board's jurisdiction, I am not in a position to review the PA's enforcement notices. Equally, I am not privy to any response to these notices that maybe in play. That said, during my site visit, I did observe that the fencing along the site's coastline has been largely removed, and the gate to the previously disputed lane to Castlegoland Beach was open. At the appeal stage, the applicant has omitted item (iv) of the current proposal, which related to this fencing, and so it is no longer before the Board. Observer (g) refers to the recent High Court case (HC Rec. No. 2023/316MCA), which recognises the public right of way for vehicles and pedestrians to Castlegoland Beach and the attendant requirement that the gate remain open.
- 7.13. In the light of the foregoing considerations, I take the view that I am not in a position to conclude definitively that the ambit of the current application is inadequate in

addressing works for which retention permission is required. I note that this application replicates the works previously refused retention permission under 23/50097. I note, too, that, while observers express the view that, in the absence of any material changes in circumstances, the previous refusal needs to be replicated, this view takes insufficient account of the Board's obligation to assess proposals on a *de novo* basis.

- 7.14. I conclude that the legal matters raised by observers do not impede the Board from proceeding to assess/determine the current application in the normal manner.

(ii) Landscape and visual impacts

- 7.15. The site coincides with the existing Narin and Portnoo Golf Links, which lies beside a stretch of coastline comprising Tramore Strand, the headland at Carrickladda, and Castlegoland Beach. Sand dunes lie along this coastline, and the site is variously of relatively flat and undulating topography.
- 7.16. Under the proposal as revised at appeal, the applicant seeks retention permission for the planted screening berms, which lie between the practice putting green and clubhouse to the north and the southern boundary of the site with a static caravan site. These berms rise to 2.119m and 3.255m in height, and they effectively screen the practice putting green and the southern portion of the adjoining car park from the static caravan site. Observer (b) testifies to their value in safeguarding the amenities of the adjacent static caravans, in terms of noise, light spillage, privacy and as a wind break.
- 7.17. Observer (c) advises that the berms are composed of sand, which has been planted with marram grass. As such, they do not look out of place within the setting of the golf links. Indeed, none of the observers takes exception to their landscape and visual impacts, as distinct from the question as to where their materials were sourced.
- 7.18. The berms are effectively separated into two entities by a meandering gravel surfaced accessway through them which links a footpath around the western end of the putting green with a service cul-de-sac from the car park beside the southern boundary fence to the site. This accessway complements the berms, and so its landscape and visual impacts are positive.

- 7.19. Under the proposal, the applicant seeks retention permission for a water storage tank, which is sited in a position adjacent to the northern end of a new maintenance shed that was permitted under 18/50855 & 23/50097. This tank is of cylindrical form, and it has a height of 4.44m. The water storage tank, the maintenance shed, and the adjoining yard lie within a hollow that is enclosed by steep slopes to the north, east, and west. To the south, the maintenance shed screens this tank, and so from vantage points outside the hollow it is not visible. Consequently, its landscape and visual impacts are limited to within this hollow, which is a utilitarian space already.
- 7.20. The PA's first reason for refusal related to the fence along the coastline, which, under the proposal as originally submitted, the applicant sought to retain. However, at the appeal stage, this fence has now been omitted, and, as indicated under the first heading of my assessment, it has largely been removed from the site. Consequently, concerns over its landscape and visual impacts have been superseded.
- 7.21. I conclude that under, the revised proposal, the landscape and visual impacts would be compatible with the landscape character and visual amenities of the area.

(iii) Archaeology

- 7.22. Under the historic environment viewer, the site hosts two recorded archaeological sites, i.e., a standing stone (DG064-008) in its south-western corner, and a midden (DG064-004) towards its centre. This viewer denotes a zone of influence around each of these sites.
- 7.23. Under the PA's third reason for refusal, the concern is expressed that works undertaken by the applicant may have had a negative impact upon the integrity of the above cited archaeological sites. The applicant has responded to this concern by drawing attention to the subject berms and water storage tank, neither of which lie near either the standing stone or the midden or come within their respective zones of influence. He, therefore, concludes that the third reason for refusal is indefensible.
- 7.24. Observers (e) and (h) draw attention to works that were previously undertaken on the Old Castlegoland Road, which exposed patterned stonework that was removed without any archaeological assessment. These observers also draw attention to the natural realignment of the local stream, which has exposed a stratum of clay beneath wind-blown sand. Thus, former arable land may have been covered quickly,

indicating the potential for archaeological remains. In these circumstances, they contend that archaeology may be more extensive within the site than simply the two recorded archaeological sites would suggest. They also contend that the DoHLGH (Archaeology)'s request for an archaeological impact assessment is therefore justified.

7.25. I note that the subject berms and water storage tank lie well away from the relevant zones of influence. I note, too, the observers' concerns that archaeological remains may be more extensive within the site than the two recorded sites would suggest. That said, unlike with the works undertaken on the Old Castlegoland Road, the observers do not report that any archaeological remains were sighted in conjunction with the works undertaken to form either the berms or install the water storage tank. In the absence of any evidence that archaeological remains were affected by these works, I am not prepared to raise objection to them retrospectively. Nevertheless, any future development should clearly be informed by an archaeological impact assessment of the site.

7.26. I conclude that, in the absence of any evidence that the berms and the water storage tank affected any archaeological remains, objection on archaeological grounds to their retention would be unreasonable.

(iv) Access

7.27. The observers raise questions of access, which related to the fence along the coastline of the site, and the lane between the cul-de-sac (L-7543-2) and Castlegoland Beach.

7.28. During my site visit, I observed that the fence, which was the subject of the current application as originally submitted, has largely been removed. In places the line of this fence obstructed an informal path, thereby preventing ease of access between Tramore Strand and Castlegoland Beach, via Carrickladda headland. The link between the current application and access was thus apparent. However, with the removal of the fence and its omission from the application at the appeal stage, this link has been negated.

7.29. The case planner insisted that the issue over whether the above cited lane is a public right of way and whether the attendant gate should be open or closed was a

separate one from the current application. In any event, observer (g) draws attention to a recent High Court order on this issue, which effectively resolves the matter.

7.30. I conclude that, as revised, the proposal raises no issues with respect to access.

(v) Water

7.31. Under the proposal, the applicant seeks retention permission for the water storage tank, which is sited in the maintenance yard in the north-eastern portion of the site. The applicant explains that this water storage tank replaces the original one, which is sited adjacent to the cul-de-sac (L-7543-2) and which has worn out. This original water storage tank was permitted under 05/2004. The PA cites Condition No. 1 that is attached to this permission. This Condition sought to cap water extraction rates from Clooney Lough, and so it required the installation of a meter. However, following a third-party appeal (PL05B.211489), the Board did not re-attach Condition No. 1. It explained its position by reference to the description of the proposal, which referred only to the retention of a water storage tank, a pumphouse, and all associated site works, and not to “the abstraction of water or the laying of pipes”.

7.32. Under 23/50097, the applicant envisaged that the replacement water storage tank would, like the original one, be fed by water abstracted from Clooney Lough. However, under the current application, the applicant now states that the new tank would be supplied primarily from the public water mains that serves the maintenance building. He also states that rainwater harvesting from the roof of the adjacent maintenance shed would contribute c. 700,000 litres per annum. He further states that the previous arrangements would be de-commissioned.

7.33. While the observers welcome the above cited revised water supply arrangements, questions are raised as to whether Uisce Eireann would be in a position to meet the applicant’s requirements. The view is also expressed that the applicant would continue to abstract water from the Clooney_38 Stream in an uncontrolled manner, i.e., without an abstraction licence, especially during periods of drought, when mobile irrigation and sprinkler systems would be employed.

7.34. Notwithstanding the applicant’s above cited position, the relevant submitted drawing no. AP-202 dated October 2023 shows the “existing line from stream – unchanged during the works”. This water line passes through the existing pumphouse in the vicinity of the original water storage tank. It is shown as supplying the old and new

maintenance sheds. An extended water line from the old maintenance shed is shown as extending to the subject water storage tank, along with a link to it from the gutter line of the adjacent new maintenance shed.

- 7.35. In the light of the above considerations, I take the view that the applicant needs to establish whether Uisce Eireann would be in a position to meet the increased water supply that would be required. I also take the view that the applicant needs to show on his submitted plans the on-site water supply network that is ultimately connected to the public water mains and to show how it either is or would be physically extended to serve the subject water storage tank.
- 7.36. In the event that the public water supply is insufficient to meet requirements, then abstraction from the Clooney_38 Stream would continue. The EPA's River Waterbody (Water Framework Directive) Status for 2016 – 2021 records that this Stream is of "poor" water quality status. The impact of continuing abstraction on the objective of improving this status to "good" by 2027 has not been explored.
- 7.37. I conclude that the applicant has yet to demonstrate the feasibility of supplying the new water storage tank from the public water mains. In these circumstances, it would be premature to grant retention permission.

(vi) Appropriate Assessment

- 7.38. I have considered the revised proposal, which is to retain planted screening berms with an accessway through them and to retain a water storage tank, in light of the requirements of S177U of the Planning and Development Act 2000 as amended.
- 7.39. The subject site is located to the east of Portnoo/Narin. It encompasses the Narin and Portnoo Golf Links, which partially overlaps with and adjoins the West of Ardara/Maas Road SAC (000197).
- 7.40. The proposal seeks the retention of the following items:
- Planted screening berms with an accessway through them in the southern portion of the site to the south of the clubhouse and the practice putting green, and
 - A water storage tank, which is sited next to a new maintenance shed in the north-eastern portion of the site.

As originally submitted, the proposal sought the retention of a fence along part of the site's coastline. However, this item has been largely removed from the site, and the applicant, at the appeal stage, omitted it from his application.

7.41. The current proposal was preceded by a similar one. Two prescribed bodies commented on this earlier proposal, as follows:

- The DoHLGH expressed concern over the extraction of water from the Clooney_38 Stream, and over the adequacy of the applicant's screening exercise.
- An Taisce reiterated the DoHLGH's concerns and added that the screening exercise was silent on where the materials comprised in the berms were sourced.

7.42. Under the current proposal, a similar screening report has been submitted to that which accompanied the earlier proposal. One significant difference between these two reports is that the applicant now proposes that the water storage tank be fed "from the water main that will be supplemented in the future from a rainwater harvesting system from the shed roof." In the first version of the report, a photograph was included, under Appendix 4, of the pumping station in the Clooney_38 Stream. In the second version of the report, this photograph is omitted, and, during my site visit, I observed that the pumping station is no longer in-situ.

7.43. Nevertheless, as discussed under the heading of "Water" in my planning assessment, the applicant has yet to demonstrate the feasibility of its reliance upon the public water supply, which serves his site. In such circumstances, I am unable to discount a scenario within which the applicant continues to abstract water from the Clooney_38 Stream.

7.44. The DoHLGH's advice includes the following paragraph:

There is not enough detail in the screening report about water extraction from the stream leading from Clooney Lough. Clooney Lough is within the SAC on account of the population of the rare aquatic slender naiad (Najas flexilis) which has been recorded there. Water extraction from the stream leading from Clooney Lough has the potential to impact on this annexed species. More detail should be provided about what volumes of water are currently being extracted, and projected extraction, from the stream. The screening report states that "The pumping does not interfere with the water levels in the

lough nor its fringing habitats". However there is no evidence provided to validate this statement.

In the light of this advice, I am concerned that any recourse to water abstraction from the Clooney_38 Stream may have implications for this annexed species.

- 7.45. An Taisce's additional concern over the source of the materials comprised in the berms is shared by the observers who object to the current proposal, i.e., observer (d) – (i). They allege that these materials were sourced from Castlegoland Beach, which lies within the West of Ardara/Maas Road SAC. By contrast, the applicant and observer (c), who supports this proposal state that the sand was sourced, during excavations to renovate it, from within the golf course and the marram grass was, likewise, harvested mainly from within the golf course.
- 7.46. As noted above, the site overlaps in places with the West of Ardara/Maas Road SAC, and so the applicant and observer (c)'s position that the materials were sourced from within the golf course does not negate the possibility that they may still have been sourced within this SAC. Additionally, observer (c) states that the marram grass was sourced *mainly* from within the golf course, leaving open the possibility that some of it may have been sourced from this SAC outside the golf course. Clearly, if sand and/or marram grass were sourced from within the SAC, then the impact of such removal upon its qualifying interests and their conservation objectives would need to be assessed.
- 7.47. The submitted screening report remains silent on the question of where the sand and marram grass were sourced, and the quantities involved.
- 7.48. In the light of the above considerations, I conclude that the applicant has submitted insufficient information to allow me to proceed with confidence to undertake my own screening assessment of the current proposal.

8.0 Recommendation

That permission for retention be refused.

9.0 Reasons and Considerations

1. Having regard to the proposed supply of water to the water storage tank proposed for retention from the public water mains, the applicant has not demonstrated the feasibility of such supply both in terms of its physical infrastructure within the site and the ability of Uisce Eireann to meet the increase in demand that would arise thereby. In these circumstances, it would be premature to grant retention permission for the water storage tank, as to do so would risk a scenario within which the identified water supply may not, in practice, be feasible. Continued reliance upon abstraction from the Clooney_38 Stream would thus ensue, and such abstraction may militate against the achievement of the objective of the Water Framework Directive that the water quality of this Stream improves in status from “poor” to “good”. Accordingly, the proposed retention of the water storage tank would be contrary to the proper planning and sustainable development of the area.
2. Having regard to the applicant’s Screening Statement for Appropriate Assessment and the disparate submissions of the parties and the observers, it is considered that insufficient information of a definitive and conclusive nature is before the Board to enable it to undertake a Stage 1 Screening for Appropriate Assessment. Specifically, insufficient information is before the Board with respect to (a) the feasibility of the applicant’s proposed reliance upon the public water mains to the exclusion of the Clooney_38 Stream to feed the water storage tank proposed for retention, and (b) the exact locations from which the sand and marram grass comprised in the planted screening berms proposed for retention were sourced and the quantities concerned. In these circumstances, the Board is unable to conclude that the proposal would not have resulted in adverse effects on the integrity of the West of Ardara/Maas Road SAC (000197), in view of this Site’s Conservation Objectives.

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.

Hugh D. Morrison
Planning Inspector

3rd May 2024

Appendix 1 - Form 1

EIA Pre-Screening

[EIAR not submitted]

An Bord Pleanála Case Reference	ABP-318836-24		
Proposed Development Summary	Planted screening berms in proximity to the practice putting green and club house, an accessway through the berms, a water storage tank and associated site works, boundary fencing along dunes.		
Development Address	Clooney, Portnoo, Co. Donegal		
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	
		No	X No further action required
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		Class.....	EIA Mandatory EIAR required
No			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		N/A	No EIAR or Preliminary Examination required
Yes		Class/Threshold.....	Proceed to Q.4

4. Has Schedule 7A information been submitted?

No		Preliminary Examination required
Yes		Screening Determination required

Inspector: _____**Date:** _____