



An
Bord
Pleanála

Inspector's Report

ABP-318929-24

Development

(1) Amendments to condition no's. 5(a), 6(a), 6(b) and 6(c) of planning permission ref no. 19/50881, (2) amendments to condition no. 4(b), 4(c) and 8(a) of planning permission ref no. 20/52024, and (3) erection of a car wash facility.

Location

Townparks and Coneyburrow, Lifford, County Donegal.

Planning Authority

Donegal County Council

Planning Authority Reg. Ref.

2351704

Applicant(s)

Daly Bros (Retail) Limited

Type of Application

Permission

Planning Authority Decision

Grant Permission with Conditions

Type of Appeal

1st Party V Conditions

Appellant(s)

Daly Bros (Retail) Limited

Observer(s)

Stephen Harte

Date of Site Inspection

9th July 2024

Inspector

Ronan O'Connor

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1.0 Site Location and Description

- 1.1. The subject site consists of an existing petrol station measuring approx. 0.38ha, located within the settlement framework of Lifford.

2.0 Proposed Development

- 2.1. The development grant permission at Planning Authority stage was for the following:
- (1) Amendments to condition no's. 5(a), 6(a), 6(b) and 6(c) of planning permission ref no. 19/50881, (2) amendments to condition no. 4(b), 4(c) and 8(a) of planning permission ref no. 20/52024, and (3) erection of a car wash facility. (PA Reg Reference 2351704)
- 2.1.1. I would note the current appeal is a First Party Appeal V Conditions 3a and 3b of PA Ref 2351704.

3.0 Planning Authority Decision

3.1. Decision

PA Reg Ref 2351704 - Grant Permission with conditions [decision date 21st December 2023]. Conditions of note are as follows:

3 (a) Operational hours 07:00 to 22:00 hours from Monday to Sunday inclusive /barriers to be erected (b) details of same to be submitted

7 (a) Noise levels limitation

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planner's report (dated 21st December 2023) is summarised below:

- Principle of a car wash is acceptable subject to restricting the hours of use to coincide with the operational hours of the shop/further details of the treatment of grey water associated with the use

Condition 5a

- Consider that the omission of condition No. 5(a), relating to the 2m high block wall along the boundary, was acceptable, given that the 3m high acoustic fence has been erected on the western site (boundary with a residential property)

Condition 6 (control of signage)

- Removal of same not acceptable – standard condition

Condition 4 – Operational hours/barriers

- Current condition limits opening times to 08:00 to 22:00 hours
- Application is to amend opening hours to 07:00 to 22:00 hours/operate fuel pumps on a 24hr basis/pumps to be switched off on the western side of the site at 10pm/nearest pumps in use are 60m from the boundary of the nearest dwelling
- Notes contents of noise report
- Given the nature of the site it was recommended that the fuel activity be limited to 07:00 to 22:00 hrs

3.2.2. Other Technical Reports

- Building Control [report date 27th November 2023] – all works must comply with Building Regulations
- NRO [report date 24th November 2023] – No impact on road projects/impacts on National Primary Road/must demonstrate compliance with TII standards
- Fire Service [report date 29th November 2023]
- Senior Executive Scientist [report date 19th December 2023]– Highlights deficiencies in the submitted Acoustic report/recommended noise study be repeated.

3.3. Prescribed Bodies

TII – No observations

Loughs Agency – details of treatment of contaminated water/note is within 200m of the River Finn SAC/impact on watercourses/fish species/buffers and appropriate treatment of waste waters recommended

3.4. Third Party Observations

- 3.4.1. 1 no submission received at application stage. The issues raised are summarised in the Planner's Report. I note that the issues raised are similar to those raised in the observation on this appeal, as summarised in Section 6.4 of this report.

4.0 Planning History

- 4.1.1. There is extensive planning history on this site which is set out in detail in the planner's report. Relevant history in the context of this appeal is as follows:

20/52024 Grant permission for 1) removal of existing temporary shop unit (2) erection of building containing shop, delicatessen, dining area, store and all associated uses (3) construction of an additional pump island for h.g.v's (4) upgrading of existing onsite sewerage treatment system prior to connection to public sewer and all other associated site works. [decision date 19/08/2021]

Conditions 4(b), 4(c) and 8(a) of planning permission ref no. 20/52024 states as follows:

- 4(b) Operational hours of the shop and associated fuelling facilities herein permitted shall be confined to between 08:00 to 22:00 hours. Premises shall thereafter be restricted for use by vehicles by the erection of barriers/gates along both site frontage openings.
- 4(c) Prior to the commencement of development herein permitted exact details in respect of item 2(b) above shall be submitted for written agreement of the planning authority and thereafter development shall proceed strictly in accordance with same.
- 8(a) A 2m high block wall rendered, painted and capped shall be constructed along the full length of all site boundaries with residential properties.

19/50881 Grant Permission for a petrol filling station consisting of a prefabricated shop and ancillary accommodation including toilets, dry fuel stores, parking area, canopy and pumps, lorry filling point, underground storage tanks, associated signage and all associated site works [decision date 02nd April 2020].

- 5(a), 6(a), 6(b) and 6(c) of same are as follows:

- 5(a) A 2m high block wall rendered, painted and capped shall be constructed along the full length of all site boundaries with residential properties.
- 6(a) No signs, symbols or any other means of advertisement shall be erected or posted on site without prior written agreement of the Planning Authority.
- 6(b) No advertisement or advertisement structure shall be erected or displayed on the canopy, on the forecourt building or anywhere within the curtilage of the site unless further authorised by a further grant of planning permission.
- 6(c) No LED, LCD, neon, digital signs or other electronic signage shall be erected on the site.

16/51232 Grant permission for construction of a prefabricated building comprising of a shop with staff facilities and all associated site works including associated parking & connection to public foul sewer [decision date 01/12/2016]

16/50280 Grant permission for (1) construction of a restaurant, shop, petrol filling station, canopy, lorry filling point, underground storage tanks and associated signage, (2) storage building with raised levels, (3) construction of astro pitch, (4) provision of water harvesting facility, (5) all associated delivery areas, parking and ancillary site works and (6) restoration of that part of the river finn special area of conservation within the subject site to include boardwalk, viewing point etc., all to be serviced by an on-site sewage treatment plant and pumped to the public sewer. [decision date 27/10/2016]

17/50099 Refuse permission for the construction of 1 no. car washing bays including drainage works and all associated site development works [decision date 16/03/2017] for 4 no. reasons:

1. Having regard to: (i) the proximity of the proposed car wash facility to the National Primary Road, and (ii) to the inadequate queuing length proposed, it is considered that the proposed development is likely to impede the entrance junction to the site as a result of vehicles waiting to enter the car wash. Accordingly it is considered that the proposed development would endanger public safety by reason of a traffic hazard, would be prejudicial to the safety and free flow of traffic on the public road and would thereby be contrary to the proper planning and sustainable development of the area.

2. The subject site currently enjoys the benefit of a temporary permission for a prefabricated shop building with a limited permission duration and it is noted that the proposal is proposed in the context of the said temporary permission. It is not considered that the provision of a car wash facility or the infrastructure associated with same is an orderly form of development in connection with a building and use that is of itself temporary. Accordingly to permit the proposed development would be disorderly and contrary to the proper planning and development of the area.

3. Having regard to the location of the proposed car wash facility on a party boundary, the Planning Authority is not satisfied on the basis of the information submitted that the proposed development would not by reason of noise, lighting, spray, use of detergent products or hours of operation constitute a bad neighbour development and/or nuisance which would be prejudicial to the amenity, value, privacy and enjoyment of the adjoining private property. Accordingly to permit the proposed development would be contrary to the proper planning and development of the area.

4. The subject site is located in close proximity to the Natura 2000 site River Finn Special Area of Conservation (SAC) Site Code: 002301 refers and is hydrologically linked to same. It is a policy of the County Development Plan, 2012-2018 (as varied) “to ensure the protection of Natura 2000 sites in accordance with the EU Habitats Directive (92/43/EEC)...” – (Policy NH-P-2 refers). Appropriate Assessment Screening has determined that the likelihood of a significant impact on the said Special Area of Conservation as a result of the proposed development cannot be excluded on the basis of the proposal to discharge grey waters from the car wash to a sheough and notwithstanding the use of an interceptor or trap. Accordingly to permit the proposed development would be in breach of Article 6 of the Habitats Directive, would materially contravene NH-P-2 of the County Development Plan, 2012-2018 (as varied) and would thereby be contrary to the proper planning and sustainable development of the area.

5.0 Policy Context

5.1. Development Plan

The relevant Development Plan is the Donegal Development Plan 2024-2030.

The subject site is located within the settlement framework of Lifford, to the south of the Town Centre, as defined on Map 21.52 of the Development Plan. Lifford is designated as a Service Town in the Settlement Strategy. Section 3.3.3 'Service Towns' notes that such service towns provide important local retail and employment functions.

Relevant Policies are as follows:

Retail

Policy CS-0-7 To support economic growth throughout the County through *inter alia* to continue to support 'County Growth Drivers' and 'Service Towns' as critical drivers of growth outside of Letterkenny.

5.2. Natural Heritage Designations

- 5.2.1. The River Finn SAC is located 100m to the east of the site at its closest point.

6.0 The Appeal

6.1. Grounds of Appeal

- 6.1.1. A First Party Appeal V Conditions 3a and 3b of PA Ref 2351704 was received on 25th January 2024.
- Parent permission 1651232 did not incorporate a restriction on opening hours.
 - Restriction came about as a result of operational hours being include in previous application forms/was not based on any noise survey.
 - Baseline noise levels have not been considered by the Planning Authority/Noise levels form a filling station operating 24hrs a day will have no material impact on the area.

- Noise report concludes that the development is very unlikely to change the overall sound level in the area/as not been duly considered by the Planning Authority.
- TII Noise Mapping submitted/shows correlation with Acoustic Report/TII survey data is 2022/clearly outside covid restrictions.
- The site does not provide for long-term lorry parking/the provision for lorries is restricted to 2 parking spaces as per the site layout plan.
- There is already a noise level restriction on the site under Condition 13 of permission 19/50881.
- Acoustics report states that at all times HGV sounds is a negligible component of the overall sound.
- Will improve road safety (will reduce driver fatigue)/will facilitate night-time charging of Electric Vehicles within the site.
- Relatively small-scale filling station with no designated areas for long-term HGV parking/no issues with over-night/long-term HGV parking.
- Reference is made to other comparable filling stations that do not have a restriction on opening hours/examples of same are set out in the appeal submission.
- Complies with Development Plan policy.
- Note the objector's dwelling (on the application) is not located to the filling station/is located beyond an intervening plot of lands/24hr station will have no greater impact on noise than that associated with the National Road as per the findings of the Acoustic Report.

Encl: Acoustic Report, Planning History docs (1651232; 1950881; 2052024).

6.2. Planning Authority Response

6.2.1. A response from the PA was received on 20th February 2024.

- PA maintains that the Acoustic Report submitted in support of the application is inadequate in order to make an informed assessment.

- Number of dwellings located in close proximity to the site.
- Not clear whether the acoustic fence is certified.
- Maximum usage of this site are unsocial able hours would give rise to significant disturbance of residential amenity.
- Noted that a 24hr fuel service, in the applicant's ownership, is available at another site approximately 200m from the roundabout to the north.
- No fuel pumps were proposed as part of application 16/51232.
- Specified in this application that opening hours would be from 07.30am to 10.30pm and therefore specific conditions in relation to opening hours did not need to be imposed.
- PA Ref 16/50280 was never enacted in accordance with the approval and subsequent applications were made.
- PA Ref 19/50881 – Opening hours (07:00 to 22:00) were specified in the application form/ conditions in relation to opening hours did not need to be imposed/condition 1 would have reinforced compliance with same
- PA has taken into account the planning history of the site.
- PA20/52024 – the use of the site for a 24hr fuel service would have been considered material/would have required an application for permission.
- Not considered exempted development.
- Would consider it reasonable if the Board considered extending the opening hours until 11pm.

6.3. Observations

6.3.1. 1 no. observation has been received from Stephen Harte (received 20th February 2024) and I have summarised same below.

- Do not have an objection to the business operating on the site as long as it operates in line with the application submitted including opening hours.
- Site has been subject to planning enforcement /non-compliance with conditions.

- Enforcement action UD17127 is important to this appeal/should be examined in great detail by the Board.

Ground 1

- Parent permission for the permission is not 165123/this was for a prefabricated shop only.
- Previous application forms referred to opening hours/at no time was it stated that it was to operate on a 24hr basis
- 16/51232 – states 7.30am to 10.30pm
- 16/50280 – did not state opening hours
- 19/50881- retention permission – opening hours stated as 7am to 10pm
- 20/52024 – opening hours stated as 8am to 10pm.
- 23/51704 – opening hours stated as 7am to 10pm.
- Request that Conditions 3a & 3B of the planning application 2351704 be upheld on the ground of opening hours submitted and applied for.

Ground 2

- Baseline noise levels from the N14 are not comparable as the N14 has a volume of traffic 3 times the volume of the N15.
- Observer's home is approximately 30m from the edge of the N15 Road/hedging reduces baseline noise levels.
- Nighttime traffic is considerably reduced on the N15 (reference is made to traffic count data).
- Noise impact is not from road/is from HGVs idling while refuelling or drivers resting/refrigerated units can operate in excess of 100 db.

Ground 3

- Incorrect address on the noise report/address is not Ballybofey Road is Townparks.
- Acoustic report is inaccurate and subjective.

- Monitoring equipment located below the level of the 1.6m high fence/was located on a vacant site.

Ground 4

- Filling station does not have any parking spaces for HGVs/provides no welfare facilities at night.
- Applicants own and operate 2 additional filling stations/site 700m from this site operates 24hrs has designated parking for HGVs.
- Also additional filling stations nearby operating on a 24hr basis.

Ground 5

- HGVs regularly parking along the boundary fence at both daytime and nighttime/photos attached/major contributor to noise
- Noise from HGV nighttime heater

Ground 6

- Other precedents referred to not relevant.
- Carwash
- Object to the installation of a car wash
- Overdevelopment/will reduce number of car parking spaces/will obstruct road users
- Applicant's have continued to operate the filling station on a 24hr basis
- Plans as submitted with the Planning Application are incorrect/there is a pump island which is not shown/facilitates extra HGVs on the site
- Noise is preventing enjoyment of home/disruption of sleep

Encl: DCC Internal Report; Original submission to DC

7.0 Assessment

- 7.1. From my reading of the file, inspection of the site and assessment of the relevant local, regional and national policies, I conclude that the key issues raised by the appeal relate to the inclusion of Conditions 3a and 3b of PA Ref 2351704.

Furthermore, in accordance with the provisions of Section 139 of the Planning and Development Act, 2000, as amended, I am satisfied that this appeal should relate only to the merits of the aforementioned conditions.

Condition 3a of 2351704

- 7.1.1. This condition restricts the operational hours of the shop and associated fuelling facilities to 07:00 to 22:00 hours from Monday to Sunday inclusive.
- 7.1.2. In the appeal submission, the first party applicants have stated that the parent permission did not include a restriction on opening hours, and the restriction has come about as a result of operational hours being included on the previous application form. It is stated that the noise levels from the filling station operating 24hrs a day will have no material impact on the area. Reference is made to the submitted noise report which concludes that there will be no impacts on sound levels. The history of the site is referred to, including reference to a noise Condition 13 of 19/50881. Comparison is made to other filling stations with no restrictions and note that a 24hr operation will reduce driver fatigue.
- 7.1.3. The Planning Authority, in the response to the appeal, have stated that the maximum usage of this site are unsocial hours would give rise to significant disturbance of residential amenity. It is noted that no fuel pumps were proposed as part of 16/51232, with hours specified in the application form for same. It is stated that the PA have had regard to the planning history of the site. It is stated that the PA would consider it reasonable if the Board considered extending the opening hours until 11pm.
- 7.1.4. The observer on this appeal refers noise issues which are preventing enjoyment of his home and disrupting sleep. Reference is also made to previous enforcement on the site. The planning history of the site is set out, namely in relation to permitted opening hours. This submission also refers to deficiencies in the submitted noise report, and refers to noise impacts from HGVs idling or from refrigerated HGV units. The submission also objects to the installation of the car wash and refers to overdevelopment of the site. It is stated that the plans as submitted with the Planning Application are incorrect and that there is a pump island which is not shown and which facilitates extra HGVs on the site.

- 7.1.5. The application to the planning authority (PA Ref 2351704) sought to *inter alia* amend condition 4(b) of 20/2504 which restricted operational hours to 08:00 to 22:00. The application sought to open the shop from 7am to 10pm and to operate the fuel pumps on a 24 hr basis, with the proviso that the fuel pumps on the western side of the site were switched off at 10pm and turned on again at 8am. The application was accompanied by a noise report which sought to support the amendment. The PA, in granting permission for the wider development, reimposed this condition restricting the operating hours, on the basis of residential amenity concerns.
- 7.1.6. I would note that the nearest residential property is located approximately 20m to the south of the site. There are 2 no. additional residential properties located on the opposite side of the N15 Road. The main issue to be considered in this appeal, in my view, is the additional impact on residential amenity that would result from a 24hr operation of the fuel pumps. In this regard I note an Acoustic Report (date 26th October 2021) accompanied the application. This considers the sound impact from activity on the site. It is noted within the report that there are approximately 28 lorries per day (on average) accessing the site for refuelling, with engines being turned off while refuelling. Noise measurements were taken from 19th to 22nd October 2021, and were continuous throughout the day and night periods. In relation to the sounds of lorries, it is stated that this sound is a negligible component of the overall sound during the day and night-time periods.
- 7.1.7. The observer on the appeal has noted that the noise from lorries idling on the site, and the associated refrigeration units are the source of most of the noise nuisance. This issue has not been considered in the noise report. Furthermore, as noted by the report of Environmental Scientist in DCC (report dated 19th December 2023), the night-time noise volumes were measured at 48.5 LAeq, which is above WHO Guideline values albeit it is stated within the noise report that the main source of noise was from the N15 road. The report of the Environmental Scientist also highlights several other issues with the noise report including the fact that the monitoring was unattended, with no record of the volume of lorries refuelling or parking up at the station. It is also noted that no monitoring was carried out at other potential noise sensitive locations, including the residential properties on the

opposite side of the N15. The height of the fence and the noise mitigation properties of same is also raised as an issue.

- 7.1.8. The observer on the appeal has states that the 3m high fence is not sufficiently high to have an impact on noise from the refrigerated units atop a HGV, nor is the fence an acoustic fence as it does not have any noise cancelling properties.
- 7.1.9. The noise impacts of fans and extract units are considered in the report, but not from the HGVs themselves, rather noise from the operation of chillers and freezers in or on the shop unit is considered. I would share the concerns of the Planning Authority, and of the observer, in relation to the limitations of the submitted noise report. From the evidence of the observer, it would appear that HGVs are parking close to the fence during the nighttime period, and the refrigerated units of same are having a detrimental noise impact. The applicant has stated that there is no designated parking on the site. Notwithstanding, the nature of the site does appear to allow for HGV parking close to this fence. I am not satisfied that the fence as erected on the site is sufficient to mitigate against the noise from the HGV units, noting the limited height of same, and noting that it does not appear to be a fence with noise reducing properties, or if it is, this has not been made clear in the application documents. As such, I would be of the view that in the absence of sufficient noise mitigation measures, the introduction of 24hr filling facilities on this site would be detrimental to the amenity of neighbouring properties and I would recommend that the condition in question remain in place.

Condition 3b of 2351704

- 7.1.10. This requires details of barriers/gates to be erected at the front of the premises to prevent access by vehicles before and after the permitted operational hours of 07:00 to 22:00. I am of the view that, given the above considerations, that this condition remains relevant and necessary and as such I recommend the condition in question remain in place.

8.0 Recommendation

- 8.1.1. Having regard to the nature of the conditions the subject of the appeal, the Board is satisfied that the determination by the Board of the relevant application as if it had been made to it in the first instance would not be warranted and, based on the

reasons and considerations set out below, directs Donegal County Council under subsection (1) of Section 139 of the Planning and Development Act, 2000, as amended:

to **RETAIN Conditions 3a and 3b of PA Ref 2351704**

Reasons and Considerations:

The Board considered that there was insufficient justification submitted to remove, or amend, the conditions in question, and in particular it was considered that it had not been demonstrated that the noise impacts from the operation of a 24hr refuelling facility had been mitigated to a sufficient extent, including, but not limited to, noise impacts from the refrigerated HGV units either moving through or parking on the site during night-time hours.

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.

Rónán O'Connor
Senior Planning Inspector

4th November 2024