



Development

Erection of an agricultural type building for the purpose of grading oysters, treatment plant and percolation area, and all associated site works including car parking facilities. A Natura Impact Statement was lodged with Further Information.

Location

Whitecastle, Quigley's Point, Co.
Donegal.

Planning Authority

Donegal County Council

Planning Authority Reg. Ref.

2351686

Applicant(s)

Angling Tours Ireland Limited.

Type of Application

Permission.

Planning Authority Decision

Grant, subject to conditions.

Type of Appeal

Third Party

Appellant(s)

Patrick Patton

Whitecastle Residents Group

Observer(s)

None.

Date of Site Inspection

3rd March 2025

Inspector

Terence McLellan

1.0 Site Location and Description

- 1.1. The subject site is located in the coastal townland of Whitecastle which lies approximately 1.8km north-east of Quigleys Point on the R238 Regional Road (Wild Atlantic Way). The subject site is an elevated site with levels rising from south-east to north-west. Access is gained from the L-6211-1 local road, which in turn provides access to and from the R238.
- 1.2. The site is a plot within a larger agricultural field with the roadside boundary to the north east and the south-west boundary with the adjacent agricultural field both being marked by hedgerows. The south-east and north-west boundaries are undefined, comprising part of the wider agricultural field landholding in the Applicant's control. Beyond, there are single storey dwellings on both sides and Scoil Naomh Fionán National School is located nearby to the south-east on the L-6211-1.

2.0 Proposed Development

- 2.1. Planning permission is sought for the erection of an agricultural type building for the purpose of grading oysters, incorporating a wastewater treatment plant with percolation area. The proposed building would measure c.19.3m in width, c.12.2m in depth and c. 6.8m in height to ridge level (c. 5.1m to eaves level). At its base the building would be finished in concrete to a height of 2.3 metres with the remainder of the building and roof being finished in Goosewing Grey metal sheeting. Gated access would be provided from the L-6211-1 and car parking would be provided for four vehicles.

3.0 Planning Authority Decision

3.1. Decision

- 3.1.1. Permission was granted by Donegal County Council on 3rd October 2024 subject to 17 generally standard conditions. Conditions of note include:
 - Condition 4 – Provision of visibility splays.
 - Condition 9 – Limitation on external storage of materials.

- Condition 10 – Use of dark green cladding.
- Condition 15 – Compliance with NIS.

3.2. Planning Authority Reports

3.2.1. The first Planner's Report contains the following points of note:

- The proposed type of aquaculture use is appropriate for the rural area, and the principle of development is acceptable.
- Design and materials are typical of this type of development and reflective of the rural area. The metal sheeting should be conditioned to be dark green to better assimilate with the landscape.
- Landscaping of the boundaries will soften the impact of the shed and should be required by condition. A condition will also be required to limit storage of material to the yard area.
- Separation distance and planting of dense boundaries should mitigate noise and odour concerns, but Further Information is required on the matter.
- The WWTS is acceptable and located a sufficient distance from an existing well having regard to EPA Code of Practice. Clarification is required regarding the size of the septic tank and percolation area.
- The Appropriate Assessment Screening Report is the same as that submitted on the previous application. It refers to the previous development site location and as such needs to be updated.
- DHLGH (Wildlife) raised concerns on the previously withdrawn application regarding deficiencies with the screening report regarding bird surveys. The report therefore also needs updated to refer to the additional days spent doing a bird survey (information submitted under 22/50231).

3.2.2. The first Planner's Report concluded with a Further Information request regarding the following:

1. Submit information on the oyster grading process, potential nuisances, and noise/odour abatement measures.

2. Submit a Traffic and Transport Assessment form, a Traffic Management Plan, and auto track analysis for HGV vehicles.
3. Submit a drawing demonstrating visibility splays of 160/3 from the site entrance or undertake a speed assessment and submit evidence that reduced visibility splays are appropriate based on 85th percentile speeds. Submit drawings showing planting of native hedges on the roadside boundary.
4. Provide clarity on the size of the septic tank and percolation area.
5. Submit a Waste Management Plan.
6. Provide details of pollution prevention and flow attenuation measures.
7. Submit an updated Ecological Report which considers the proximity of the site to the Lough Foyle SPA to enable a determination on whether or not Appropriate Assessment is required.

3.2.3. Further Information was received on 23rd May 2024, with some outstanding items submitted on the 20th June 2024. In addition to the points above, the submission included a Natura Impact Statement. The application was re-advertised/publicised on the 13th August (newspaper) and 15th August (site notice).

3.2.4. The Further Information was considered in the second Planner's Report which contains the following points of note:

- The Applicant has confirmed type/frequency of movements to and from the site. The Roads Engineer had no objection subject to standard conditions.
- Attenuation has been provided and will allow for safe and contained storage of excess rain and storm water.
- The Waste Management Plan will ensure no odours associated with the business.
- The process will not involve noise nuisance with the exception of machinery for transport and movement of products/materials. Operating hours can be conditioned.
- The Hydrology section of the NIS confirms that run-off will be discharge to an existing storm drain on the western boundary which flows into the River Roosky.

- Traffic speeds are such that visibility lines of 90m are acceptable.
- The Site Suitability Assessment relates to the application site on the previously withdrawn application (22/50231) and percolation tests were only carried out on adjacent lands. No objection was received from the Environmental Health Officer in relation to this and the withdrawn application was within the same overall parcel of land, with similar characteristics to the current subject site.
- Reasonable to assume the soil quality and percolation value will be similar and the WWTS will be further away from the school therefore further minimising risk.

3.2.5. **Other Technical Reports**

3.2.6. **Area Roads Engineer (30.05.2024):** No objection subject to conditions regarding drainage, visibility, surface dressings and set-backs.

3.2.7. **Building Control (27.11.2023):** Works will need to comply with the Building Regulations. A Disability Access Certificate will be required, and a Fire Certificate may be required. Registration with the Building Control Management System will be required.

3.2.8. **Chief Fire Officer (29.11.2023):** Access and facilities for the fire service must comply with regulations. A Fire Safety Certificate will need to be obtained.

3.2.9. **Environmental Health (11.12.2023 and 13.06.2024):** Further Information/Clarification is needed regarding the size of the septic tank and percolation area. Clarity needed on proposed staff numbers and population equivalent as there is conflicting information. Following the submission of FI, concerns were raised regarding the location of a well which has not been included in the Site Assessment according to Appendix E, groundwater protection responses of the EPA code of practice.

3.3. **Prescribed Bodies**

3.3.1. **The Loughs Agency (04.12.2023):** No objection in principle. Storm water from the development site should not be discharged to nearby watercourses unless first passed through pollution interception and flow attenuation measures. It is essential that silt traps and settlement ponds are utilised and are capable of settling out materials prior to discharge off site and must be regularly inspected and maintained. Adequate containment should be provided for all chemical and oil storage on the site. The

provision of bunds should be in accordance with the appropriate Irish Standards. Work methods and materials must not impinge upon any nearby watercourses. The use of cement/concrete on site will require careful management.

3.4. Third Party Observations

- 3.4.1. A number of observations were received, including from the Whitecastle Residents Group and Patrick Patton, the Appellants. The observations are on file for the Commission's information. The issues raised are reflected in the grounds of appeal which are set out in detail in Section 6.1 below.

4.0 Planning History

- 4.1. The site is within a larger agricultural field landholding within the Applicant's control. Whilst there is no planning history for the current subject site, there is a previously withdrawn application for an identical development on land to the immediate south-east and within the wider landholding (Planning Authority Reference 2250231).

5.0 Policy Context

5.1. Donegal County Development Plan 2024-2030

- 5.1.1. The Planner's Report assessed the proposed development against the policies of the Donegal County Development Plan 2018-2024. This was superseded by the 2024-2030 County Development Plan which came into effect on the 26th June 2024 and is now the operative development plan for the County.
- 5.1.2. Chapter 7 – Economic Development has the strategic objective to promote and build on the economic strengths and assets of the County as a competitive, innovative and attractive place for a range of sectors to locate and grow, based on the advantages of a robust economic base that is highly appealing to investors and employees. Relevant policies include:

Rural Area

- ED-P-4: Consider proposals for the businesses in rural areas of the nature identified in 'a.', b.' and 'c.' below, where such uses would comply with the terms of 'c.' below:
 - a) Valuable additions to the local economy and/or tourism offering in an area, such as those relating to food (particularly value-added products such as artisan food), forestry (e.g. wood products), crafts, creative industries, ecotourism and agritourism (e.g. farmhouse accommodation, pet farms, farm holidays, health farms, equestrian activities, bird-watching holidays, painting and photography tuition, angling tourism, field studies cycling and hill-walking); and
 - b) Genuine Farm Diversification Schemes where the diversification scheme is to be run in conjunction with the agricultural operations of the farm. The provision of associated short-term let rental accommodation purposes (up to a maximum of five units) may be considered.
 - c) (i) As far as possible, proposed developments should reuse or adapt existing redundant farm buildings. (ii) Any new proposed building must be of a scale, form and design appropriate to the rural area. (iii) Compliance with all the relevant criteria of Policy ED-P-9. (iv) Where there are deficiencies in water infrastructure and/or where it is not possible to connect to the public systems, the developer will be required to demonstrate that bespoke development-led solutions can be identified, agreed in writing, implemented, and maintained.
- ED-P-9: It is a policy of the Council that any proposal for economic development use, in addition to other policy provisions of this Plan, will be required to meet all the following criteria.
 - a) It is compatible with surrounding land uses existing or approved.
 - b) It would not be detrimental to the character of any area designated as being of Especially High Scenic Amenity (EHSA).
 - c) It does not harm the amenities of nearby residents.

- d) There is existing or programmed capacity in the water infrastructure (supply and/or effluent disposal) or suitable developer-led improvements can be identified and delivered.
- e) The existing road network can safely handle any extra vehicular traffic generated by the proposed development or suitable developer-led improvements are identified and delivered to overcome any road problems.
- f) Adequate access arrangements, parking, manoeuvring and servicing areas are provided in line with the development and technical standards set out in this plan or as otherwise agreed in writing with the planning authority.
- g) It does not create a noise nuisance.
- h) It is capable of dealing satisfactorily with any emission(s).
- i) It does not adversely affect important features of the built heritage or natural heritage including natura 2000 sites.
- j) It is not located in an area at flood risk and/or will not cause or exacerbate flooding.
- k) The site layout, building design, associated infrastructure and landscaping arrangements are of high quality and assist the promotion of sustainability and biodiversity.
- l) Appropriate boundary treatment and means of enclosure are provided and any areas of outside storage proposed are adequately screened from public view.
- m) In the case of proposals in the countryside, there are satisfactory measures to assist integration into the landscape.
- n) It does not compromise water quality nor conflict with the programme of measures contained within the current north western river basin.

5.2. Natural Heritage Designations

5.2.1. The site is not located within or immediately adjacent to a European site. The nearest European site is the Lough Foyle SPA (Site Code: 004087) which is approximately 450 metres to the south east.

5.3. EIA Screening

5.3.1. The proposed development is not a class for the purposes of EIA as per the classes of development set out in Schedule 5 of the Planning and Development Regulations 2001, as amended (or Part V of the 1994 Roads Regulations). No mandatory requirement for EIA therefore arises and there is also no requirement for a screening determination. Refer to Form 1 in Appendix 1 of report.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. Two Third Party appeals have been submitted against the decision of Donegal County Council to grant permission for the proposed development.

6.1.2. **Appeal 1** – Patrick Patton, Principal, Scoil Naomh Fionán, Whitecastle, Quigleys Point, Donegal. The grounds of appeal can be summarised as follows:

6.1.3. Contravention of the Development Plan

- The proposal is for a commercial business building rather than an agricultural building.
- The proposal fails to comply with national, regional and local policy which focuses on the growth of towns like Moville and Greencastle.
- The proposal should be located in Moville or Greencastle which are specifically mentioned in the CDP in terms of marine relate development.
- National, regional and local guidance emphasises the strengthening of settlements through locating economic development in towns and villages, which will in turn support rural communities. The decision of Donegal County Council to permit the proposed development in the rural countryside is contrary to this.

- Acknowledge the importance of the marine economy for Donegal, including commercial fishing and fish processing.
- Policy ED-P-4 only identifies two types of business that will be supported by the Planning Authority in rural areas. This includes valuable additions to the local economy and/or tourism offering, and genuine farm diversification schemes. The proposed development is neither.
- Policy ED-P-10 states that commercial development will be considered on the periphery of settlements where the use would be considered a bad neighbour or the extent of land needed would be prohibitive. The proposal does not comply as it is located in a rural area.
- Policy ED-P-9 requires economic development in a rural area to be compatible with existing and approved surrounding land uses and not harmful to amenity. Proximity of the development to dwellings and Scoil Naomh Fionán undermines compliance with this policy.
- The decision to permit the proposed development in the rural area of Whitecastle is contrary to Policy MRCM-P-3 which seeks to safeguard and enhance the role of Greencastle as a centre of fishing, fleet activity, seafood processing, and/or marine services and education.

6.1.4. Deficiencies in Natura Impact Statement

- The bar is set high in assessing potential impacts on Natura 2000 sites and the precautionary principle is always applied. Uncertainty or lack of details should not infer that adverse impacts will not arise.
- Bird observation reports were carried out November/December 2022 and February/March 2023. They are out of date and not a true representation of the potential impact on birds.
- No information has been provided in terms of vantage points used or flight paths identified.
- Scottish Natural Heritage, the leading body in avian surveys, requires a minimum of two years of surveys for wind farm development. Whilst the development is not a wind farm, a greater intensity of study, more up-to-date surveys, and details of vantage points/flight paths is not unreasonable.

- The habitat map, hydrological connection map, and layout plan in the NIS is not the layout for the proposed development. The Appropriate Assessment also includes a layout plan and hydrological connection map which are not associated with the proposed development. The use of incorrect plans does not inspire confidence in the robustness of the NIS.
- Despite what is stated in the NIS, no watercourse/open drain exists along the western boundary. There is an open well adjacent to the western boundary.
- These matters were raised in submissions on the planning application and in the report of the Environmental Health Officer and yet were ignored by the Planning Authority who failed to seek clarity on the matter.
- It is alarming that the Applicant's Ecologist insisted on the existence of a drainage ditch where one doesn't exist. Mitigation relies on this and the NIS is questionable.

6.1.5. Procedural Matters

- The site layout plan submitted at Further Information provides for an attenuation basin outside of the red line boundary. The attenuation basin is a fundamental component of the development to address pollution.
- As it is outside of the red line it cannot be included as part of the overall development.
- The site plan issue is contrary to Article 22(2)(i) and 23(1)(a) of the Planning and Development Regulations 2001 (as amended).

6.1.6. Traffic Hazard

- Due to the traffic movements associated with Scoil Naomh Fionán, the junction of L-6211-1 and the R238 is at capacity throughout the school year.
- In light of traffic levels and congestion, it is inconceivable that the Planning Authority should consider that traffic associated with the commercial development can be accommodated without worsening an already serious traffic problem.
- Traffic information provided by the Applicant is unclear, with references to both jeep/trailer and tractor/trailer. It is unclear how the Planning Authority could make an assessment of potential traffic issues.

- There are records of accidents on the R238, including fatalities. These are associated with turning movements similar to the junction with the L-6211-1. The combination of the steep gradient on the L-6211-1 and restricted visibility on the R238 make this a dangerous junction.
- The Commission should review the suitability of the junction to cater for additional commercial traffic.

6.1.7. **Appeal 2** – Whitecastle Residents Group (various). The substantive points raised can be summarised as follows:

- There would be health risks to residents of the area and the children and staff of the nearby school.
- The Natura Impact Statement contains significant misinformation, and the Planning Authority have not published any document purporting to be an Appropriate Assessment.
- The Planning Authority's assessment has been inadequate. The proposal does not meet the vision of the Development Plan and policies ED-P-9 and ED-P-10.
- The development may compromise water quality in the area.
- Policy ED-P-12(a) refers to a new access and intensification of use.
- The attenuation basin is outside of the site.
- It is stated that effluent will be released to an open drain that flows into the Roosky River. No such open drain exists, either within or outside of the site. The reports are inaccurate.
- Water released from the site will contain contamination.
- The plan is to store 0.5 tonnes of decaying oysters which will be crushed and placed on nearby lands. There will be odours. No details have been given on who has given permission to allow this on their land or if it is in keeping with the EU Waste Directive.
- The Natura Impact Statement states that there is no spring well evident. There is a spring well close to the bottom of the field.
- It is stated that the local engineer had no objection on traffic grounds but there is no signed document from the engineer confirming this. Given the proximity to a school, this is flawed.

- It is stated that the development will not cause noise pollution but the Planning Authority have not established this as fact, there are no assessments from similar proposals and guessing is not sufficient.
- The development would be visually obtrusive in the landscape of a designated high scenic area. Property values would be negatively affected.
- The Suitability Assessment was conducted in 2021 on the original site plan which was later changed and moved further up the site. No new trial pits were excavated.
- The Planner's Report makes no reference to the Environmental Health Officer Report which states reservations with regard to the information provided and there remains no approval from the EHO.

6.2. Applicant Response

6.2.1. A First Party response was received from Doherty Building Surveyors raising the following points:

- The development was originally assessed against the 2018-2024 CDP and then reassessed against the current CDP, with the Planning Authority concluding that it did not contravene the relevant policies and objectives.
- The site is in a rural area, the design is similar to other agricultural sheds which blend into the landscape and planting is proposed for the site boundaries which will reduce visual impact.
- The building is over 75 metres from any residential property. Separation distance and planting will reduce visual and noise impact.
- The Appellant argues that the proposed building and any form of development should be located in a settlement, the same principle could apply to the school.
- Sustainability comes from local agri/aquaculture enterprises being close to their source of produce.
- The NIS was prepared under the appropriate European Directives. Open wells are generally indicated on Ordnance Survey maps. There is no evidence to indicate that there is a well in this location.

- The traffic Survey indicates a total of 12 vehicle movements per day from the site which will not affect any traffic flows in the area.
- The application site was moved from the previously withdrawn application to improve separation distances along with substantial shrub planting.

6.3. Planning Authority Response

6.3.1. The Planning Authority submit that the majority of the matters raised in the appeal have been addressed in the reports of the Assistant Planner. Further points of note include:

- The development is not of a commercial nature, it is ancillary to an indigenous maritime related occupation, and its location is functionally dependant on oysters being harvested.
- The Council will facilitate onshore aquaculture related developments and are satisfied that the development accords with the CDP.
- Environmental Impact Assessment and Preliminary Examination are not required.
- The attenuation basin is on land outlined in blue and within the Applicant's control.
- Confirmation from the senior roads engineer was given to a third party that the level of traffic being generated would be minimal, records of this conversation are included in an email of 6th September. The Planning Authority are satisfied that there will be no intensification of the junction with the R238.
- The Environmental Health Officer's response was acknowledged. The separation distance between the development and the well meets the minimum distances specified by the EPA.

6.4. Observations

6.4.1. None.

6.5. Further Responses

6.5.1. None.

7.0 Assessment

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

- Principle of Development
- Design and Visual Impact
- Amenity
- Transport
- Surface Water Drainage

7.2. Principle of Development

7.2.1. It is stated in the grounds of appeal that the proposal is a commercial business rather than agricultural and that it fails to comply with relevant policies which seek to focus growth on towns such as Greencastle and Moville. Whilst acknowledging the importance of the marine economy for Donegal, including commercial fishing and fish processing, it is argued that CDP policy does not support this use in the rural area and that it does not comply with policies ED-P-4, ED-P-9, ED-P-10, ED-P-12-(a), and MRCP-P-3.

7.2.2. Policy MRCP-P-3 seeks to safeguard the role of Killybegs, Greencastle, and Burtonport as centres of fishing, fleet activity, seafood processing and/or ancillary marine services and education including, where necessary the provision of additional harbour infrastructure, and facilitate the diversification of such locations into new areas of appropriate investment and employment opportunities, including marine related economic activity including supporting the development of Marine Resource Innovation Park(s). In my opinion, the policy does not preclude development in other settlements/areas and in any event, I consider that the proposed operation is small

enough that it would not challenge the role of the noted settlements in terms of the fishing industry.

- 7.2.3. Policy ED-P-12 does not exist in the current or former CDP. I suspect that the policy the Appellant intended to refer to is in fact T-P-12 which relates to access and traffic matters which are dealt with in the transport section below. Policy ED-P-10 relates to development on the edge of settlements and is not applicable to the proposal.
- 7.2.4. Consequently, I consider the CDP policies applicable to this proposal to be ED-P-4 and ED-P-9 which are set out in detail in Section 5 above. In terms of ED-P-4, the grounds of appeal argue that the policy only identifies two types of business that will be supported by the Planning Authority in rural areas, including valuable additions to the local economy and/or tourism offering, and genuine farm diversification schemes, concluding that the proposed development is neither.
- 7.2.5. I accept and agree that the proposed development does not represent a farm diversification scheme, however Section (a) of the policy states that business that will be considered in the rural area include 'valuable additions to the local economy and/or tourism offering in an area, such as those relating to food (particularly value-added products such as artisan food), forestry (e.g. wood products), crafts, creative industries, ecotourism and agritourism (e.g. farmhouse accommodation, pet farms, farm holidays, health farms, equestrian activities, bird-watching holidays, painting and photography tuition, angling tourism, field studies cycling and hill-walking).
- 7.2.6. I am satisfied that an oyster grading facility can reasonably be considered as a business relating to food and that the principle of the development, in terms of land use, is acceptable.

7.3. **Design and Visual Impact**

- 7.3.1. It is stated in the grounds of appeal that the development would be obtrusive in the landscape. Policy ED-P-4 (c)(i) states that any new proposed building must be of a scale, form and design appropriate to the rural area. ED-P-9 (b) states that development must not be detrimental to the character of any area designated as being of Especially High Scenic Amenity.
- 7.3.2. The subject site is located in an area of High Scenic Amenity. These are landscapes of significant aesthetic, cultural, heritage and environmental quality that are unique to

their locality and form a fundamental element of the landscape and identity of County Donegal. These areas have the capacity to absorb sensitively located development of scale, design and use that will enable assimilation into the receiving landscape and which does not detract from the quality of the landscape, subject to compliance with all other objectives and policies of the plan. Policy L-P-2 seeks to protect these areas allowing only development of a nature, location and scale that integrates with and reflects the character and amenity of the landscape.

- 7.3.3. The site is a coastal rural area. The proposed buildings are of a scale, form and appearance that is broadly reflective of other agricultural style buildings that are typical of the rural area. In my opinion, whilst the building would undoubtedly be visible, it would not have any significant detrimental impact on wider visual amenity or the character of the landscape within which it sits.
- 7.3.4. In terms of the adjacent dwellings to the north-west and south-east, I am satisfied that it would not have any significant negative impact on visual amenity from these properties. Furthermore, the separation distances and change in levels is such that it would not be an overly prominent feature in the landscape when viewed from the dwelling to the north-west. I also share the view of the Planning Authority that the shed should be finished in dark green materials to further assimilate into the landscape and that further boundary planting would help soften the impact on immediate neighbours and area.

7.4. Amenity

- 7.4.1. It is submitted by the Appellants that the proposed use would result in amenity impacts to residents and the nearby National School. Concerns relate to the proposed storage of waste products on site (dead oysters, seaweed), that this would give rise to odour impacts, and that there is insufficient information regarding the onward spread of this material as a fertiliser on agricultural lands, including where the land is and who has given permission. Further concerns relate to potential noise impacts, with the grounds of appeal noting that the Planning Authority have failed to establish that there would not be any noise, that there are no noise assessments from similar developments and that guessing is not sufficient.
- 7.4.2. In terms of odours, the Planning Authority requested details of waste management from the Applicant as part of the Further Information request, ultimately considering

the submission to be acceptable, and it is stated that the separation distance to nearby properties and planting of dense boundaries would help mitigate noise and odour concerns.

- 7.4.3. The Waste Management Plan submitted by the Applicant is brief. It states that discarded oysters will be stored on site in sealed containers until a sufficient quantity is accumulated. This equates to 1 tonne which it is estimated will take 3 months to accumulate. Once the relevant quantity has been accumulated, a crusher will be brought on site to crush the shells, taking approximately four hours, after which it will be used as a fertiliser and spread on land by local farmers. In terms of seaweed, it is stated that this will be dried on site, with volumes of 0.5 tonnes per month being accumulated. As with the oyster shells, this will be collected and spread on fields as a fertiliser.
- 7.4.4. I have no objections to the onward use of crushed shells/seaweed as a fertiliser, subject to the appropriate licences and permissions being sought by the Applicant. However, I am of the view that the concerns raised by the Appellants regarding malodorous material is reasonable. The Applicant merely states that the shells will be stored in sealed containers, no further details are provided, and no details are provided as to the storage of seaweed. It is stated that the seaweed will be dried on site, so it can reasonably be assumed that sealed storage would not be possible for this element. Furthermore, the building itself does not include any odour abatement measures such as ventilation/extraction equipment or air filtration.
- 7.4.5. Whilst I consider the information submitted with the application to be deficient on this matter, I am of the view that an appropriate Waste Management Scheme and odour abatement details/mitigation could be secured by way of condition in the event that the Commission are minded to grant permission.
- 7.4.6. In terms of noise, only one delivery/collection is expected per day. Furthermore, the machinery used in the grading of the oysters would be internal and I am satisfied that appropriate conditions could be applied to secure a rated noise level and appropriate noise attenuation within the building. This would also be the case for any required ventilation/extraction equipment required to mitigate odour impacts as set out above, whereby a condition could be applied to ensure that appropriate noise levels are maintained. In terms of noise from the shell crusher, this is estimated to be required

once every three months for four hours and would not in my opinion represent significant incursion on amenity. In any event, the timing of such operations could be conditioned to ensure minimal impact on amenity.

7.4.7. I note the concerns raised by the Appellants in respect of the devaluation of property. However, having regard to the assessment and conclusion set out above, I am satisfied that the proposed development would not seriously injure the amenities of the area to such an extent it that would adversely affect the value of property in the vicinity.

7.5. **Transport**

7.5.1. The grounds of appeal raise a number of transport related concerns, most notably that the existing road and junction with the R238 cannot accommodate the development and that it would worsen an already serious traffic problem. It is stated that the steep gradient on the L-6211-1 and the restricted visibility on the R238 make this a dangerous junction. It is further stated that whilst the local engineer had no objection on traffic grounds, there is no signed document confirming this, which is flawed given the proximity to a school.

7.5.2. Whilst I note the concerns raised by the Appellants, from my site inspection, it is clear that sufficient visibility is provided at the junction with the R238. I also note that the road had low traffic volumes. The junction itself is located on a straight stretch of the R238 and whilst there is a dip in the road towards the south-west, this is at a sufficient distance to ensure it does not have any significant effect on visibility in my opinion. I accept that the L-6211-1 descends steeply towards the junction but again, this is a straight road, and the stop line/junction can readily be anticipated. I do not share the Appellants' view regarding the safety and capacity of the current road infrastructure.

7.5.3. In terms of the operational development, the Applicant's Traffic Management Plan states that oysters will be taken from the shore of Lough Foyle and transported to the shed via the R238 and L-6211-1, anticipating one journey in each direction, each day. Oysters once graded for sale will be stored in bags and stacked on pallets and transferred to another site for onward transportation with one journey anticipated every second day. Vehicles for workers would be small vans with a maximum of three vans per day. I note that car parking is provided for four vehicles. Clearly, the development would have a very minimal impact on traffic with a low number and frequency of vehicle

movements being proposed. I am satisfied that there would be no significant negative impact on the local road network or traffic safety and I consider the visibility splays provided by the Applicant onto the L-6211-1 to be acceptable.

7.6. **Surface Water Drainage**

- 7.6.1. The grounds of appeal raise various drainage related concerns, notably that the site will discharge surface water to an open drain on the western boundary where it is submitted that no open drain exists, that the NIS and surveys have failed to identify and have regard to an existing spring well and concerns regarding the fact that the attenuation basin is located outside of the red line boundary. Further concerns are raised regarding the fact that the development is relying on the previous Site Suitability Assessment for the withdrawn application.
- 7.6.2. Although the attenuation basin is located outside of the red line, it is located within the blue line plan, on land within the Applicant's control. Whilst not ideal, I agree with the Planning Authority that the Applicant has effective control of the land to ensure this element of the proposal can be implemented.
- 7.6.3. In terms of the Site Suitability Assessment, I also share the view of the Planning Authority that underlying conditions in the wider landholding are likely to share the characteristics of the land where the previous percolation tests were undertaken and that values will be similar.
- 7.6.4. With regard to the open drain, the western boundary is characterised by a mature hedgerow with an overgrown base. At the time of my site inspection, I was unable to locate any evidence of an open drain along this boundary. The Appellants submit that there is a spring well in the adjacent field towards the south-west of the site. I did not have access to this land at the time of my site inspection however I note that photographic evidence was submitted of the well and its location was indicated on the Appellant's submitted map.
- 7.6.5. Whilst I was not able to verify the presence of the spring well, it is reasonable to assume that there could potentially be some form of drain emanating from it, depending on the discharge volume of the well. However, this would be in the neighbouring field, outside of the Applicant's ownership and in my view insufficient information has been provided regarding how the site would connect to any open drain from the spring well, particularly in the apparent absence of an open drain running

along the Applicant's boundary. I also note that neither issue was identified in the Applicant's surveys, including the site suitability report which did not identify an open drain on the site or its western boundary. In this respect I am not satisfied that sufficient information has been provided regarding surface water drainage, noting that in addition to the ambiguity regarding the open drain and well, no details regarding the volume/capacity of the attenuation basin or run-off/discharge flow rates has been provided or how potential wash out from the oyster grading process would be handled. It is my view that the Commission cannot be satisfied with the proposed surface water regime based on the information provided and this is not a matter that I would be inclined to address by way of a condition.

8.0 Appropriate Assessment Screening – Stage 1

- 8.1. In accordance with Section 177U of the Planning and Development Act 2000 (as amended) and on the basis of objective information provided by the Applicant, I conclude that the proposed development could result in significant effects on the Lough Foyle SPA in view of the conservation objectives and qualifying interests of that site. It is therefore determined that Appropriate Assessment (Stage 2) [under Section 177V of the Planning and Development Act 2000] of the proposed development is required.

9.0 Appropriate Assessment Stage 2 – Natura Impact Statement

- 9.1.1. In screening the need for Appropriate Assessment, it was determined that the proposed development could result in significant effects on the Lough Foyle SPA. It was determined that the development would have potential for significant effects in view of the conservation objectives of those sites and that Appropriate Assessment under the provisions of S177U/ 177AE was required.
- 9.1.2. Following an examination, analysis and evaluation of the NIS and all associated material submitted, I consider that adverse effects on site integrity of the European sites set out above can be excluded in view of the conservation objectives of these sites and that no reasonable scientific doubt remains as to the absence of such effects.
- 9.1.3. My conclusion is based on the following:

- The nature and scale of the development.
- The treatment of wastewater on site.
- Detailed assessment of construction and operational impacts.
- Effectiveness of mitigation measures proposed including construction management measures, and treatment of surface water.
- Application of planning conditions to ensure adherence to these measures.
- The proposed development would not affect the attainment of conservation objectives for the Lough Foyle SPA.

10.0 Water Framework Directive

10.1. The site is located in the coastal townland of Whitecastle which lies approximately 1.8km north-east of Quigleys Point on the R238 Regional Road (Wild Atlantic Way). The subject site is an elevated site with levels rising from south-east to north-west. Access is gained from the L-6211-1 local road, which in turn provides access to and from the R238. The Roosky River is approximately 100m to the west. As noted in the Appropriate Assessment section, there is ambiguity regarding the presence of an open drain on the site. Concerns were also raised in the appeal regarding water quality deterioration.

10.2. I have assessed the proposed development and have considered the objectives as set out in Article 4 of the Water Framework Directive which seeks to protect and, where necessary, restore surface & ground water waterbodies in order to reach good status (meaning both good chemical and good ecological status), and to prevent deterioration. Having considered the nature, scale and location of the project, I am satisfied that on balance, it can be eliminated from further assessment because there is no conceivable risk to any surface and/or groundwater water bodies either qualitatively or quantitatively.

10.3. In coming to this conclusion, I have considered the ambiguity regarding the presence of an open drain along the western boundary of the site, which is integral to the surface water drainage regime proposed as part of the development. At the time of my site inspection, I was unable to locate or identify an open drain on the western boundary.

10.4. However, this relates to surface water as opposed to foul water, which will be treated on site. Whilst there is clear ambiguity regarding a connection to an open drain and

onwards to the Roosky River, I do not consider that this translates to impacts on water quality in the context of the WFD.

10.5. Should a drainage connection to an open drain or the Roosky River be identified then the standard construction practices and specific mitigation measures put forward for surface water drainage that seeks to remove pollutants via the use of interceptors, in addition to various construction stage interventions, would ensure that the development would not result in a deterioration of the surface water body or jeopardise it reaching its WFD objectives. These mitigation measures are such that they would also remove any risk to the underlying groundwater body, which is not at risk. Foul water would be treated on site via a wastewater treatment system and percolation area and subject to compliance with EPA standards and code of practice this would not present a risk to surface or groundwater bodies.

11.0 Recommendation

11.1. I recommend that the Commission refuse planning permission for the reasons stated.

12.0 Reasons and Considerations

1. On the basis of submissions made in connection with the application and appeal, including the lack of clarity regarding surface water drainage, the disputed presence of an open drain along the western boundary of the site, and attenuation/run-off rates, the Commission is not satisfied that adequate information has been submitted to establish that the development would be served by satisfactory surface water drainage arrangements. The development would, therefore, 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.

Terence McLellan
Senior Planning Inspector

12th January 2026

Appendix 1 - Form 1 - EIA Pre-Screening

Case Reference	ABP-321138-24
Proposed Development Summary	Erection of an agricultural type building for the purpose of grading oysters, treatment plant and percolation area, and all associated site works including car parking facilities.
Development Address	Whitecastle, Quigley's Point, Co. Donegal.
In all cases check box /or leave blank	
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (For the purposes of the Directive, "Project" means: - The execution of construction works or of other installations or schemes, - Other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources)	<input checked="" type="checkbox"/> Yes, it is a 'Project'. Proceed to Q2. <input type="checkbox"/> No, No further action required.
2. Is the proposed development of a CLASS specified in Part 1, Schedule 5 of the Planning and Development Regulations 2001 (as amended)?	
<input type="checkbox"/> Yes, it is a Class specified in Part 1. EIA is mandatory. No Screening required. EIAR to be requested. Discuss with ADP.	
<input checked="" type="checkbox"/> No, it is not a Class specified in Part 1. Proceed to Q3	
3. Is the proposed development of a CLASS specified in Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended) OR a prescribed type of proposed road development under Article 8 of Roads Regulations 1994, AND does it meet/exceed the thresholds?	
<input checked="" type="checkbox"/> No, the development is not of a Class Specified in Part 2, Schedule 5 or a prescribed type of proposed road	

<p>development under Article 8 of the Roads Regulations, 1994.</p> <p>No Screening required.</p>	
<p><input type="checkbox"/> Yes, the proposed development is of a Class and meets/exceeds the threshold.</p> <p>EIA is Mandatory. No Screening Required</p>	
<p><input type="checkbox"/> Yes, the proposed development is of a Class but is sub-threshold.</p> <p>Preliminary examination required. (Form 2)</p> <p>OR</p> <p>If Schedule 7A information submitted proceed to Q4. (Form 3 Required)</p>	

<p>4. Has Schedule 7A information been submitted AND is the development a Class of Development for the purposes of the EIA Directive (as identified in Q3)?</p>	
<p>Yes <input type="checkbox"/></p>	<p>Screening Determination required (Complete Form 3)</p>
<p>No <input checked="" type="checkbox"/></p>	<p>Pre-screening determination conclusion remains as above (Q1 to Q3)</p>

Inspector: _____ Date: _____

Appendix 2 – Appropriate Assessment Screening Determination

Screening for Appropriate Assessment Test for likely significant effects	
Step 1: Description of the project and local site characteristics	
Brief description of project	Erection of an agricultural type building for the purpose of grading oysters, treatment plant and percolation area, and all associated site works including car parking facilities.
Brief description of development site characteristics and potential impact mechanisms	<p>The subject site is located in the coastal townland of Whitecastle which lies approximately 1.8km north-east of Quigleys Point on the R238 Regional Road (Wild Atlantic Way). The subject site is an elevated site with levels rising from south east to north-west. Access is gained from the L-6211-1 local road, which in turn provides access to and from the R238.</p> <p>The site is a plot within a larger agricultural field with the roadside boundary to the north east and the south-west boundary with the adjacent agricultural field both being marked by hedgerows. The south east and north west boundaries are undefined, comprising part of the wider agricultural field landholding in the Applicant's control. Beyond, there are single storey dwellings on both sides and Scoil Naomh Fionán National School is located to the south-east on the L-6211-1.</p> <p>The site is not located within or immediately adjacent to a European site. The nearest European site is the Lough Foyle SPA (Site Code: 004087) which is approximately 450 metres to the south east.</p>

Screening report	<p>Screening Report for Appropriate Assessment, prepared by Greentrack Environmental Consultants, dated January 2022.</p> <p>Updated Screening Report submitted at Further Information stage, Greentrack Environmental Consultants, dated April 2024.</p>
Natura Impact Statement	Natura Impact Statement, prepared by Greentrack Environmental Consultants, dated April 2024.
Relevant submissions	<p>Third Party grounds of appeal, issues raised:</p> <ul style="list-style-type: none"> • The development may compromise water quality in the area. • It is stated that surface water will be discharged to an open drain that runs along the western boundary of the site and connecting to the Roosky River, but no such drain exists either within or outside the site. • The NIS fails to acknowledge the presence of a spring well. • Bird observation reports are out of date and not a true representation of the potential impact on birds. • The habitat map, layout plan, and hydrological connection map do not relate to the subject site. • The NIS is based on inaccurate information. It is deficient and not of a high enough standard.
Step 2. Identification of relevant European sites using the Source-pathway-receptor model	
<p>The screening report considered sites within a 15km Zone of Influence. There is no ecological justification for such a wide consideration of sites, and I have only included those sites with any possible ecological connection or pathway in this screening determination.</p>	

European Site (code)	Qualifying interests ¹ Link to conservation objectives (NPWS, date)	Distance from proposed development (km)	Ecological connections ²	Consider further in screening ³ Y/N
Lough Foyle SPA Site Code: 004087	To maintain the favourable conservation condition of: A005 Great Crested Grebe <i>Podiceps cristatus</i> A037 Bewick's Swan <i>Cygnus columbianus bewickii</i> A038 Whooper Swan <i>Cygnus cygnus</i> A043 Greylag Goose <i>Anser anser</i> A046 Brent Goose <i>Branta bernicla hrota</i> A048 Shelduck <i>Tadorna tadorna</i> A050 Wigeon <i>Anas penelope</i> A052 Teal <i>Anas crecca</i> A053 Mallard <i>Anas platyrhynchos</i> A063 Eider <i>Somateria mollissima</i> A069 Red-breasted Merganser <i>Mergus serrator</i> A130 Oystercatcher <i>Haematopus ostralegus</i> A140 Golden Plover <i>Pluvialis apricaria</i> A142 Lapwing <i>Vanellus vanellus</i> A143 Knot <i>Calidris canutus</i> A149 Dunlin <i>Calidris alpina alpina</i> A157 Bar-tailed Godwit <i>Limosa lapponica</i> A160 Curlew <i>Numenius arquata</i>	The SPA is located approximately 440 metres to the south-east.	There is a potential hydrological connection via an open drain which connects to the Roosky River and discharges to lough Foyle.	Yes.

	<p>A162 Redshank <i>Tringa totanus</i></p> <p>A179 Black-headed Gull <i>Chroicocephalus ridibundus</i></p> <p>A182 Common Gull <i>Larus canus</i></p> <p>A184 Herring Gull <i>Larus argentatus</i></p> <p>A999 Wetlands</p> <p>A001 Red-throated Diver <i>Gavia stellata</i> is listed in the qualifying interests but is not listed in the conservation objectives. For the purposes of my assessment, I will assume a maintain objective in line with the remaining qualifying interests.</p>			
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An initial site walkover was conducted in September 2021 with follow ups conducted between November 2022 - February 2024 and with additional bird observation reports conducted between November 2022 and March 2023 in line with advice from the Department on the previously withdrawn application. The Screening Report classes the site as improved agricultural grassland (GA1) with hedgerows (WL1) spanning the east, south and west boundaries and an open drain (FW4) running along the western boundary. The Commission should note that the site description in the Screening Report relates to the previously withdrawn application on land to the immediate south, there are no hedgerows on the southern boundary of the current site. Furthermore, the site plans included in the Screening Report also refer to the site of the previously withdrawn application and do not reflect the current site area.

<p>Step 3. Describe the likely effects of the project (if any, alone <u>or</u> in combination) on European Sites</p> <p>No direct impacts are anticipated to the Lough Foyle SPA in terms of the loss of supporting habitat or fragmentation. The development would not result in disruption to bird species given the nature, scale and location of the development.</p> <p>Foul water would be discharged to the on-site wastewater treatment system and percolation area and does not represent a significant risk to water quality.</p>
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There is a potential link to the SPA via surface water pathways and therefore the potential for a deterioration of water quality during both the construction and the operational stages as a result of the potential release of significant discharges of suspended sediment in run-off from the site.

AA Screening matrix

Site name Qualifying interests	Possibility of significant effects (alone) in view of the conservation objectives of the site*			
	Impacts	Effects		
Site 1: Lough Foyle SPA Site Code: 004087	Indirect: Potential impacts as a result of water quality degradation.	Potential impacts on water quality as a result of sediment and contaminants entering the water via surface water drainage.		
	Likelihood of significant effects from proposed development (alone): Yes.			
	Impacts	Effects		
	Likelihood of significant effects from proposed development (alone): Yes.			
	If No, is there likelihood of significant effects occurring in combination with other plans or projects?			
<p>Concerns were raised by the Planning Authority regarding the bird surveys and the fact that the Screening Report was the same one as submitted for a previously withdrawn application on a site to the immediate south-east. The Planner's Report noted that an updated Screening Report/Ecological Report was required and that this should refer to the current application site. Whilst an updated Screening Report was submitted (April 2024), this is generally consistent with an updated Screening Report submitted on the previously withdrawn application (dated March 2023) and continued to refer to the incorrect site. Issues regarding accuracy were also raised by the Appellants. I have addressed these in the Stage II Appropriate Assessment.</p>				
Step 4 Conclude if the proposed development could result in likely significant effects on a European site				
<p>Based on the information provided in the screening report, my site inspection, and a review of the conservation objectives and supporting documents, I consider that, in the absence of further assessment and potential mitigation measures and in adopting the precautionary principle, the development has the potential to result in significant effects on the Lough Foyle SPA.</p>				

Screening Determination

Significant effects cannot be excluded

In accordance with Section 177U of the Planning and Development Act 2000 (as amended) and on the basis of the information considered in this AA screening, I conclude that it is not possible to exclude that the proposed development alone would give rise to significant effects on the Lough Foyle SPA in view of its conservation objectives. Appropriate Assessment is therefore required.

Appendix 3 – Appropriate Assessment

Appropriate Assessment

The requirements of Article 6(3) as related to Appropriate Assessment of a project under part XAB, sections 177V [or S 177AE] of the Planning and Development Act 2000 (as amended) are considered fully in this section.

Taking account of the preceding screening determination, the following is an Appropriate Assessment of the implications of the proposed development in view of the relevant conservation objectives of the Lough Foyle SPA based on scientific information provided by the Applicant.

The information relied upon includes the following:

- Screening Report for Appropriate Assessment prepared by Greentrack Environmental Consultants (April 2024).
- Natura Impact Statement prepared by Greentrack Environmental Consultants (April 2024).
- Site Suitability Assessment prepared by Porter Consulting Engineers (November 2021).
- Information on the NPWS website.

I have noted the matters raised by Third Parties regarding accuracy and I have addressed these below. Overall I am satisfied that the information provided is adequate to allow for Appropriate Assessment. I am satisfied that all relevant aspects of the project which could result in significant effects are considered and assessed in the NIS and mitigation measures designed to avoid or reduce any adverse effects on site integrity are included and assessed for effectiveness. I will address these matters in further detail in the assessment section below.

Submissions/observations

The following points have been raised in the grounds of appeal:

- The development may compromise water quality in the area.
- It is stated that surface water will be discharged to an open drain that runs along the western boundary of the site and connecting to the Roosky River, but no such drain exists either within or outside the site.
- The NIS fails to acknowledge the presence of a spring well.

- Bird observation reports are out of date and not a true representation of the potential impact on birds.
- The habitat map, layout plan, and hydrological connection map do not relate to the subject site.
- The NIS is based on inaccurate information. It is deficient and not of a high enough standard.

European sites

Lough Foyle SPA (004087):

Summary of Key issues that could give rise to adverse effects (from screening stage):

(i) Water Quality Degradation

Qualifying Interest features likely to be affected	Conservation Objectives	Potential adverse effects	Mitigation measures (summary)
A005 Great Crested Grebe <i>Podiceps cristatus</i>	To maintain the favourable conservation condition:	Water quality degradation through dust, silt, sediment, contaminants/hydrocarbons	NIS Section 6 and Table 6.1.
A037 Bewick's Swan <i>Cygnus columbianus bewickii</i>	Long term population trend stable or increasing.		
A038 Whooper Swan <i>Cygnus cygnus</i>	No significant decrease in the range, timing or intensity of use of areas.		
A043 Greylag Goose <i>Anser anser</i>			
A046 Brent Goose <i>Branta bernicla hrota</i>			
A048 Shelduck <i>Tadorna tadorna</i>			
A050 Wigeon <i>Anas penelope</i>			

A052 Teal <i>Anas crecca</i>			
A053 Mallard <i>Anas platyrhynchos</i>			
A063 Eider <i>Somateria mollissima</i>			
A069 Red-breasted Merganser <i>Mergus serrator</i>			
A130 Oystercatcher <i>Haematopus ostralegus</i>			
A140 Golden Plover <i>Pluvialis apricaria</i>			
A142 Lapwing <i>Vanellus vanellus</i>			
A143 Knot <i>Calidris canutus</i>			
A149 Dunlin <i>Calidris alpina alpina</i>			
A157 Bar-tailed Godwit <i>Limosa lapponica</i>			
A160 Curlew <i>Numenius arquata</i>			
A162 Redshank <i>Tringa totanus</i>			
A179 Black-headed Gull <i>Chroicocephalus ridibundus</i>			
A182 Common Gull <i>Larus canus</i>			
A184 Herring Gull <i>Larus argentatus</i>			
A999 Wetlands			

	The permanent area occupied by the wetland habitat should be stable and not significantly less than the area of 588 hectares, other than that occurring from natural patterns of variation		

Assessment of issues that could give rise to adverse effects:

(i) Water Quality Degradation

Construction Phase

Earthworks and construction have the potential to cause suspended sediment loadings in run-off leaving the site. Concrete washout can impact on the quality of receiving waters. The use of hydrocarbons and other chemicals present a spillage risk. Importation of invasive species could affect SPA ecosystems, Dust and noise impacts. Mitigation measures include:

- Compliance with IFI guidelines.
- Installation of capture drain and attenuation pond with double silt fence and appropriate maintenance.
- Appropriate overburden storage and removal.
- Suspension of clearance works during heavy rainfall.
- Control of site boundaries.
- Concrete washout off-site or within a closed loop tank system.
- Appropriate maintenance of plant.
- Refuelling in designated areas away from capture drain on an impenetrable surface and using bowsers and no storage of fuel on site.
- Regular maintenance and inspection of plant and provision of spill kits on site.
- Visual monitoring of surface waters for signs of hydrocarbon pollution.
- Appropriate site hygiene to prevent the spread of invasive species and checks/verification of imported materials.
- Spraying of site entrance surfaces during dry weather and maintenance of the access to prevent/remove accumulations of silt.
- Cover, seed or vegetate completed earthworks.
- Selection of plant with noise emissions compliant with limiting levels.
- Shut down of plant used intermittently.

- Compliance with noise guidelines regarding selection of plant, control of noise sources, screening, and hours of work.
- Maintenance of plant and use of exhaust silencers.

Operational Stage

Inadequate surface water drainage could lead to increased discharge of contaminated stormwater. Invasive species could affect ecosystems of the SPA. Mitigation measures include:

- Surface water drainage to be directed through an onsite hydrocarbon and silt interceptor.
- All surface water run-off to be captured by stormwater drainage system and directed to the hydrocarbon interceptor prior to discharge to the drainage ditch.
- Clean water from the roof discharged to the drainage ditch without treatment.
- Regular inspection of surface water infrastructure.
- Harvest inspected for marine invasive species prior to grading and an invasive species management plan drawn up by a competent ecologist and implemented.

Adequacy and Accuracy of Information

At the outset I acknowledge the concerns raised in the grounds of appeal regarding the accuracy of the NIS, including that it contains incorrect data relating to the previous site, that the NIS fails to identify a spring well to the south-west of the site, and that surface water drainage/mitigation relies on an open drain on the western boundary that doesn't exist.

Having reviewed the NIS it is clear that the site plans/layout plans contained therein refer to the site and layout of the previously withdrawn application which was on land that sits immediately to the south of the current subject site. This matter was raised by the Planning Authority at FI stage however it is clear from both the subsequently submitted Appropriate Assessment Screening Report and NIS that this was not addressed. In terms of the NIS, the following incorrect information is used:

- Figure 1.1 – Site Location.
- Figure 4.2 – Habitat Map
- Figure 4.3 – Hydrological Connection Map
- Figure 5.1 – Site Layout

All of which refer to the site and/or layout of the previously withdrawn scheme. In my opinion, despite the inaccuracies in the site plans, this can be regarded as functionally the same site in regard to potential impacts on the SPA.

On the matter of the failure to identify an existing spring well, I note that the well is approximately 400m or so away from the SPA. Whilst the failure to identify the well has implications on surface water drainage of the site and could call into question the site survey, I do not agree that it would have any meaningful impact on the NIS or potential effects on the SPA

The surface water management regime in the NIS is predicated on surface water being discharged to an open drain that the NIS states runs along the western boundary of the site. I note that the hydrological connection map in the NIS is incorrect and refers to the site of the previously withdrawn application. The Appellants contend that there is no such open drain either within or immediately outside of the site. I also note that the Site Suitability Assessment did not record any open drain on or close to the western boundary, with the only nearby open drain identified being a piped drain on the L-6211-1 which from my site inspection appears to be on the north-east side of the road. From my site inspection, I was unable to locate or identify an open drain on the western boundary of the site.

The drainage pathway that is in question here is how the site connects to another open drain or how it connects onwards to the River Roosky rather than the connection to the SPA itself. Whilst there are ambiguities regarding the site-specific surface water drainage regime/outfall, it is the case that any surface water drainage proposal brought forward on the site will ultimately discharge to the SPA either via open drains or a combination of open drain/water course.

In my opinion, whilst noting the clear inaccuracies in the NIS regarding the site plans and the disputed drainage channel, the mitigation measures proposed are acceptable and generally standard and can be applied to a surface water drainage regime from the site. Whilst the site-specific hydrological pathway may currently be unclear, the ultimate discharge pathway would be to Lough Foyle and the measures contained in the NIS could be applied to the site, noting the use of relevant interceptors and standard construction measures.

I accept that an NIS should be based on complete and definitive information and note the issues raised. The matter was partially raised by the Planning Authority in the Further Information request, and the Applicant could reasonably have taken steps to address the issues and I accept the view of the Appellants' that the errors undermine confidence in the NIS. However, for the reasons set out above, I do not consider that the matters raised render the NIS unacceptable, having regard to the nature, scale and location of the development and the ultimate connection pathways that would be required to drain the site.

In-Combination Effects

I am satisfied that in-combination effects have been assessed adequately in the NIS. The Applicant has demonstrated satisfactorily that no significant residual effects would remain post the application of mitigation measures and there is therefore no potential for in-combination effects.

Appropriate Assessment Conclusion

In screening the need for Appropriate Assessment, it was determined that the proposed development could result in significant effects on the Lough Foyle SPA. It was determined that the development would have potential for significant effects in view of the conservation objectives of those sites and that Appropriate Assessment under the provisions of S177U/ 177AE was required.

Following an examination, analysis and evaluation of the NIS and all associated material submitted, I consider that adverse effects on site integrity of the European sites set out above can be excluded in view of the conservation objectives of these sites and that no reasonable scientific doubt remains as to the absence of such effects.

My conclusion is based on the following:

- The nature and scale of the development.
- The treatment of wastewater on site.
- Detailed assessment of construction and operational impacts.
- Effectiveness of mitigation measures proposed including construction management measures, and treatment of surface water.
- Application of planning conditions to ensure adherence to these measures.
- The proposed development would not affect the attainment of conservation objectives for the Lough Foyle SPA.