

8th January 2020

The Secretary,
An Bord Pleanála,
64 Marlborough Street,
Dublin 1, D01 V902

✓

AN BORD PLEANÁLA	
LDG-	023220-20.
ABP-	
09 JAN 2020	
Fee: €	220
Type:	PMO
Time:	—
By:	Expo PoA (as Reg.)

Section 5 Appeal to An Bord Pleanála

Ref S5 19/25 – Ground excavation, alteration and demolition on private and public property at Narin and Portnoo Links and Castlegoland Beach, Narin, Portnoo, Co Donegal.

I enclose the recent Section 5 declaration (SS 19/25) by Donegal County Council for review by the board. Donegal County Council issued the declaration on 6th December 2019.

I disagree with the declaration that the development is exempted development on numerous grounds which are addressed in detail in the attached 'Section 5 - Background Information' Document. The reasons for appealing the decision include:

- Contravention of previous planning condition
- Works are clearly extension to the golf club and therefore cannot fall under class 34
- Obstruction of Public Rights of way
- Development within a Proposed Natural Heritage Area
- Development is within or adjacent to a Special Area of Conservation

I also include a copy of Donegal County Council's section 5 declaration ref S5 19/23, This declaration is not referred for appeal, but included as background information. The declaration recognises the public rights of way on the site in question.

Applicants - Anne Murphy, Declan Brennan, Hanora Gyo, Bronagh Heverin, Tony Kitterick

Applicants Address – Loughfad, Portnoo, Co Donegal, F94 P8E2

Agent Name – Tony Kitterick

Agent Address - Loughfad, Portnoo, Co Donegal, F94 P8E2

Please do not hesitate to Contact the undersigned if you require any additional information or clarification, to date approximately 150 letters of objection to the obstruction of the public rights of way and trespass have been issued to Donegal County Council. Copies of these are available if required.

Yours Faithfully

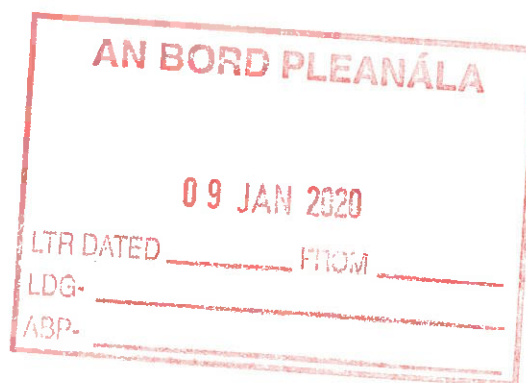


Tony Kitterick

Loughfad, Portnoo, Co Donegal. F94 P8E2

Attached Documents

- Declaration S5 19/25 – The subject of this appeal
- Postal Order for €220 payable to An Bord Pleanála
- Receipt for original section 5 application to Donegal County Council
- Document 'Section 5 – Background information, previously submitted with section 5 application
- Drawing SK-01 – Drawing, previously submitted with section 5 application
- An Bord Pleanála Inspectors report ref 05B.RL2252 – refers to previous An Bord Pleanála decision for the same site
- DCC declaration S5 19/23 – For information regarding Public Rights of Way
- Drawing NWPS-001 – Background information regarding SAC Boundary and record photos
- Drawing SK-03 – Identification of Vehicular Rights of Way





**Comhairle Contae
Dhún na nGall**
Donegal County Council

www.ccdhunnangall.ie www.donegalcoco.ie



Ref. No: S5 19/25

6th December, 2019

Tony Kitterick,
Lough Fad
Portnoo
Co Donegal
F94 P8E2

Re: Section 5 – Ground excavation, alteration and demolition on private and public property at Narin and Portnoo Links and Castlegoland Beach, Narin, Portnoo, Co Donegal

A Chara,

I refer to your request received on 10th October, 2019 as above under Section 5 of the Planning and Development Act, 2000 (as amended). Same has now been decided and I now issue to you herewith the Council's Declaration thereon. You are now advised that, in accordance with Section 5 (3) (a) of the Planning & Development Act, 2000 (as amended) where a Declaration is issued, any person issued with such a Declaration may, on payment to An Bord Pleanála of such fee as may be prescribed, refer a Declaration for review by the Board within 4 weeks of the date of issuing of the Declaration.

Mise, le meas,



for Senior Planner
Planning Services
/mp

Cuir freagra chuig: Áras an Chontae, Leifear, Contae Dhún na nGall, Éire F93 Y622
Please reply to: County House, Lifford, Co. Donegal, Ireland F93 Y622

Planning and Development Acts, 2000 – 2018
(Declaration and Referral on Development and Exempted Development)

DECLARATION

AN BORD PLEANÁLA

Chief Executive's Order No: 2019PH2446

Reference No: S5 19/25

Name of Requester: Tony Kitterick,
Lough Fad
Portnoo
Co Donegal
F94 P8E2

09 JAN 2020

LTR DATED _____ FROM _____
LDG- _____
ABP- _____

Summarised Description of development the subject matter of request:

Ground excavation, alteration and demolition on private and public property

Location of Development:

Narin and Portnoo Links and Castlegoland Beach, Narin, Portnoo, Co Donegal

IT IS HEREBY DECLARED THAT THE SUBJECT MATTER OF THE REQUEST AS ABOVE

IS Development

IS Exempted Development

WITHIN THE MEANING OF THE ABOVE ACT

The Planning Authority, in considering this referral, had regard particularly to:

- (i) Sections 2(1), 3(1) and 177U of the Planning and Development Act 2000 (as amended).
- (ii) Class 34, Schedule 2, Part 1, (Exempted Development - General) of the Planning & Development Regulations, 2001 (as amended), and
- (iii) Article 9 (vi) of the Planning & Development Regulations 2001 (as amended).

and concluded that:

The proposal IS DEVELOPMENT within the meaning of the Planning & Development Act, 2000 (as amended) and IS EXEMPTED DEVELOPMENT as it comes within the scope of Class 34 Schedule 2, Part 1, (Exempted Development - General) and Article 9 (vi) of the Planning & Development Regulations 2001 (as amended).

DATED THIS 6th DAY OF DECEMBER, 2019

J. Bonney
FOR SENIOR PLANNER
PLANNING SERVICES



AN BORD PLEANAL

Donegal County Council
Cash Office
Three Rivers Centre
Lifford
Co. Donegal
074 9153900
10/10/2019 10:14:39

09 JAN 2020

LTR DATED FROM

LDG-

SP-

Receipt No. : LA01/0/78194

TONY KITTERICK
LOUGHFAD
PORTNOO
DONEGAL PO
CO DONEGAL
REF - SECTION 5

PLANNING FEE - PART V/SECT 5 8
GOODS 80.00
VAT Exempt/Non-vatable

Total : 80.00 EUR
63.01 IEP

Tendered :
Cash 100.00

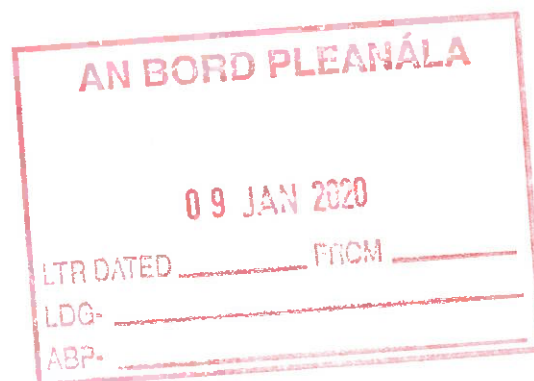
Change : 20.00

Issued By : Rosemary Coyle
From : Cash Office
Vat reg No. IE8F28103W

Section 5 – Background Information

The 'works': Ground excavation, alteration and demolition at Narin and Portnoo Links and public lands at Castlegoland Beach all in Narin, Portnoo, County Donegal

9th October 2019



1 - Description of development

The 'works' that comprise 'development' within the meaning of sections 2 and 3 of The Planning And Development Act 2000 are the excavation, alteration and demolition of ground

- within privately owned property (Narin and Portnoo Links) being point A on the map SK-01; and
 - on public property (Narin Beach and Castlegoland Beach) being point B on the map SK-01
- all at Narin, Portnoo, County Donegal.

Photographs 1 and 2 below illustrate the works at point A on the map SK-01, while photograph 3 illustrates the position at point A on the map SK-01 prior to the works.

Photograph 4 below illustrates the works at point B on the map SK-01, while photograph 5 illustrates the position at point B on the map SK-01 prior to the works.

Drawing SK-01 contains a table, which is also included at Appendix F and provides a broad overview of the position vis-à-vis planning and the works.

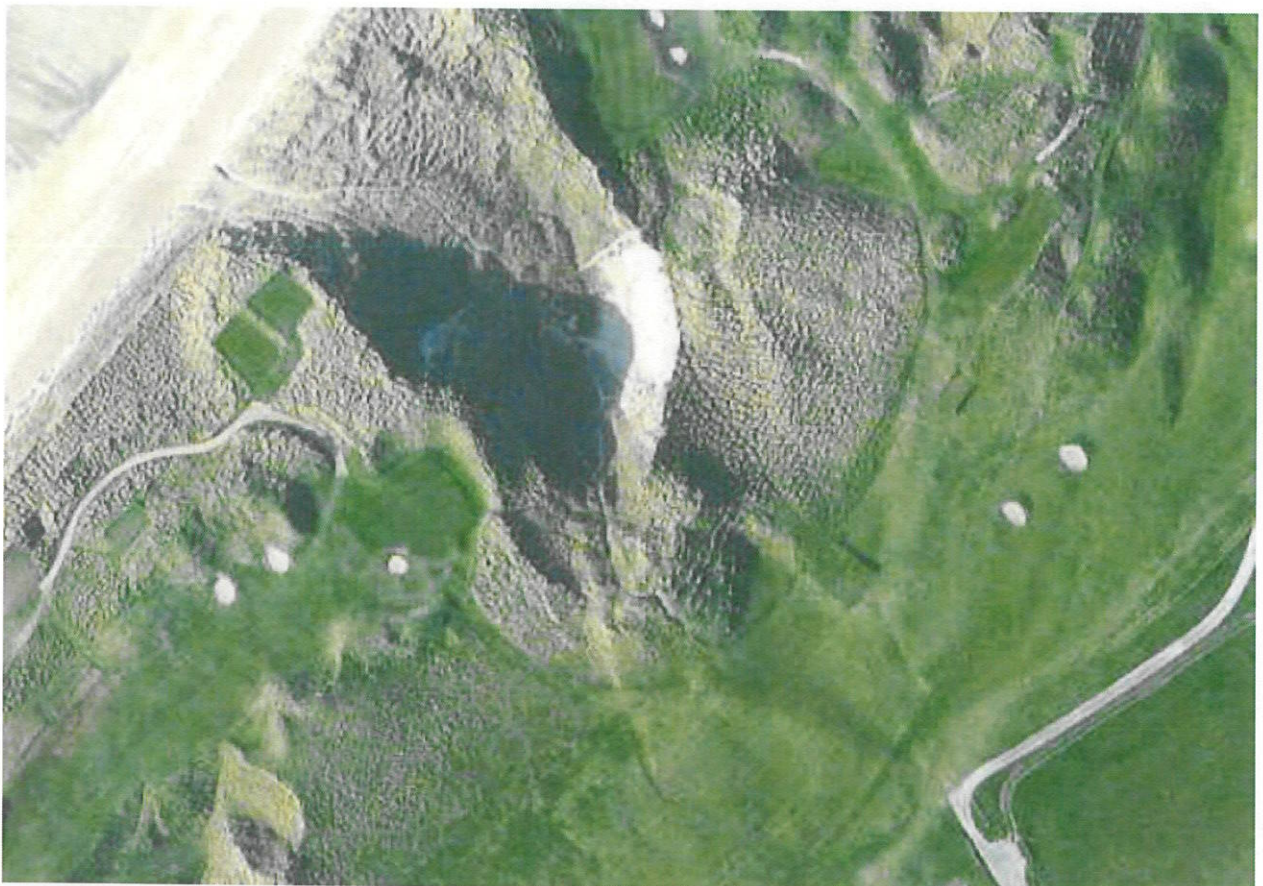


Photograph 1 - 29th May 2019 – View of works on privately owned property (Narin and Portnoo Links) being point A on the map SK-01 with Sweeney's Banks behind and looking towards golf course gate.



ORD PLEANÁLA
9 JAN 2020
FROM

Photograph 2 – 29th May 2019 – Close up view of works on public property being point A on the map SK-01 with Sweeney's Banks behind and looking towards golf course gate.



Photograph 3 - Aerial Photograph evidencing the position of point A on the map SK-01 prior to the works.



Photograph 4 - 29th May 2019 – View of works on public property being point B on the map SK-01.



Photograph 3 - Aerial Photograph evidencing the position point B on the map SK-01 prior to the works.

It is submitted that these works comprise development within the meaning of the Planning Acts and are not exempted development within the meaning of the Planning Acts for the reasons set out.

2 - Location of the works

Narin and Portnoo Links form part of the headland between two beaches, namely Narin Beach and Castlegoland Beach.



Figure 1 - Location

This golf links in Narin and Portnoo was originally owned by Narin and Portnoo Golf Club however when the club got into financial difficulty, the bank sold the debt which was ultimately acquired by the current owners/mortgagees, Knather Acquisitions Unlimited Company, of which Liam McDevitt and his sister-in-law Jane McDevitt are the directors. The course was renamed 'Narin and Portnoo Links' by the new owners/mortgagees. The title deeds for the property are registered in the Land Registry in folio 68768F County Donegal and registration of their title was completed on the 1st of August 2017 – see Figure 2. A map showing the boundaries of folio 68768F County Donegal is included in drawing SK-01 where the folio is shaded yellow.

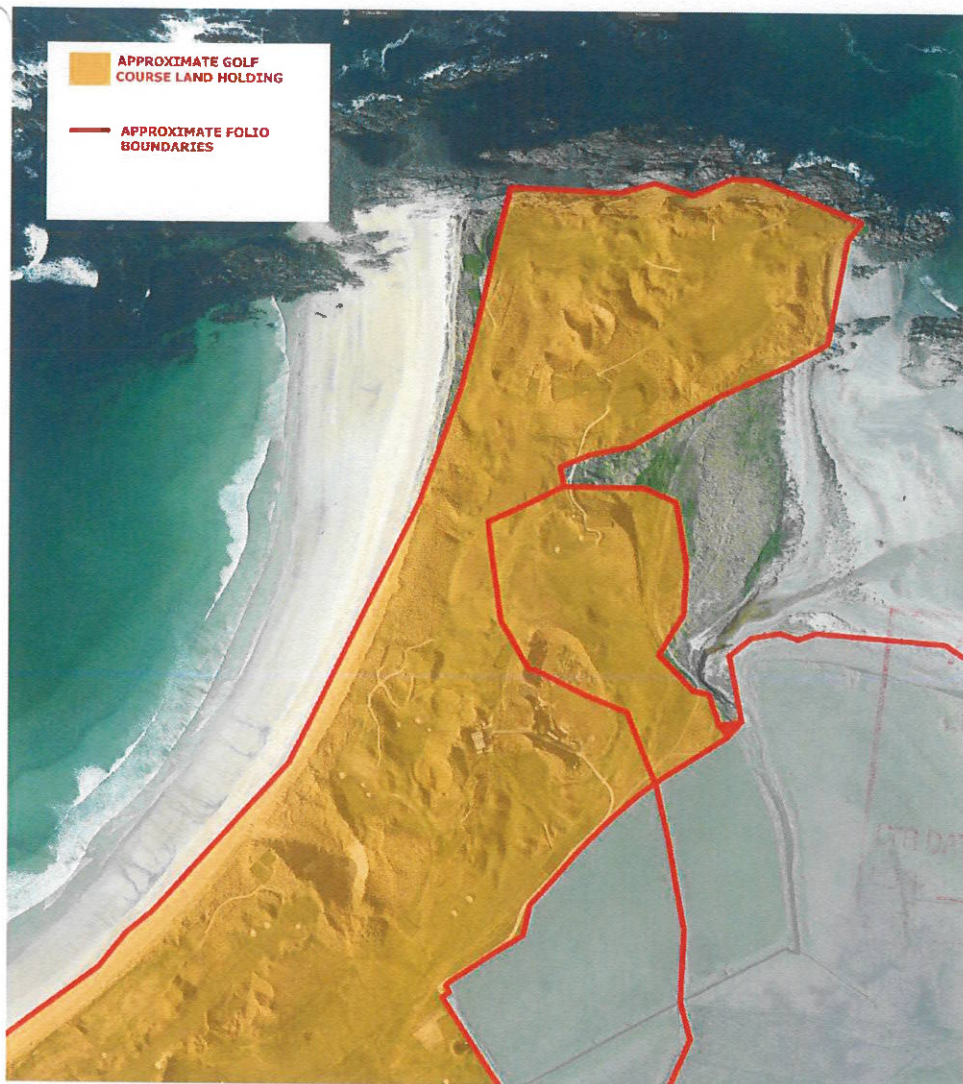


Figure 2 – Folio 68768F County Donegal is shaded yellow, however part of the works are on land outside of the folio to the North West and East.

The location of the works on folio 68768F County Donegal are shown on drawing SK-01 marked with the letter 'A'.

The location of the works on Public Land are shown on drawing SK-01 marked with the letter 'B'.

The identifiers A and B as shown on drawing SK-01 will be referenced throughout this document.

3 - Jurisdiction of Donegal County Council

Part of the works are located on folio 68768F County Donegal as shown on drawing SK-01, and marked A are within the functional area of Donegal County Council.

The balance of the works are located on publicly owned property, as shown on drawing SK-01, and marked B. This publicly owned property is either foreshore or reclaimed land.

If it is foreshore, it is owned by the State pursuant to Article 10 of the Constitution and the Foreshore Acts. Section 224 of the Planning and Development Act 2000 confirms the foreshore to be within the functional area of the planning authority which adjoins such land and so confers the required

jurisdiction on Donegal County Council. Section 225 of the Planning and Development Act 2000 confirms the obligation to obtain permission for development on these lands. The current County Donegal Development Plan reiterates the statutory provisions:

"The foreshore of Ireland is classed as the land and seabed between the high water of ordinary or medium tides (shown HWM on Ordnance Survey maps) and the twelve-mile limit (12 nautical miles equals approximately 22.24 kilometres). Foreshore also covers tidal areas of rivers, particularly estuaries.

Currently Planning permission is required for, and the Council assesses proposals for, development on the foreshore (not being exempted development) where it would adjoin the functional area of the planning authority or any reclaimed land adjoining such functional area. However where the Council proposes to carry out development wholly or partially on the foreshore it must apply to An Board Pleanála for approval" (pages 162-163).

If it is reclaimed land, then it forms part of the local authority area - section 227 of the Local Government Act 2001 provides that land which is above the ordinary high water mark, which is formed by natural accretion, shall be included in and form part of the county to which it is connected. It is therefore within the functional area of Donegal County Council.

Further confirmation of the jurisdiction of Donegal County Council is provided through section 157 of the Planning and Development Act 2000, which provides that proceedings for an offence under the Act can be brought by the planning authority whether or not the offences were committed in the authority's functional area.

In effect any development on the foreshore is treated the same as a development on the mainland with all the necessary requirements for an application for planning permission. In addition, section 225 of the Planning and Development Act 2000 effectively requires that it is also necessary to obtain such licences as are required under the provisions of the Foreshore Acts.

4 - Name and address of the owner

Narin and Portnoo Links is owned by Knather Acquisitions Unlimited Company, of which Liam McDevitt of 44 Coleytown Road, Westport, Connecticut 06880, USA and his sister-in-law Jane McDevitt of the Mullin's, Ballyshannon, County Donegal are the directors. Jane McDevitt is also the company secretary.

5 - Development

Section 3(1) of the Planning and Development Act 2000 defines development as "the carrying out of any works on, in, over or under land or the making of any material change in the use of any structures or other land."

Section 2 of the Planning and Development Act 2000 defines "works" as "any act or operation of construction, excavation, demolition, extension, alteration, repair or renewal and, in relation to a protected structure or proposed protected structure, includes any act or operation involving the application or removal of plaster, paint, wallpaper, tiles or other material to or from the surfaces of the interior or exterior of a structure."

It is submitted that the works the subject of this application as described in Paragraph 1 come within the definition of 'works' in the Planning Acts and as such comprise

development' within the meaning of the Planning Acts and are not exempted development within the meaning of the Planning Acts for the reasons set out below.

Drawing SK-01 contains a table, which is also included at Appendix F and provides a broad overview of the position vis-à-vis planning and the works.

6 - Exempted development

Section 4(2)(a) of the Planning and Development Act 2000 provides that the Minister may by regulations provide for any class of development to be exempted development for the purposes of the Act.

CLASS 45 Part 1 of Schedule 2 of the Planning and Development Regulations 2001 exempts "any drilling or excavation for the purpose of surveying land or examining the depth and nature of the subsoil, other than drilling or excavation for the purposes of minerals prospecting".

There is no evidence that these works are for the purposes of surveying land or examining the depth and nature of the subsoil and the works cannot therefore come within this exemption.

CLASS 34 Part 1 of Schedule 2 of the Planning and Development Regulations 2001 exempts works "incidental to the maintenance and management of any golf course or pitch and putt course, including alterations to the layout thereof, excluding any extension to the area of a golf course or pitch and putt course".

However, Article 9 of PDR 2001 contains a list of restrictions to developments which might otherwise appear exempt. Several of these restrictions apply to the works and are outlined as follows:

Article 9 (1)(a)(i) provides that any such development will not be exempt if it "contravenes a condition attached to a permission under the Act or be inconsistent with any user specified in the permission under the Act".

Condition 4 of Planning Permission 18/50855 dated July 2018 and Condition 3 of the decision to grant planning permission 18/51383 dated October 2018 both provide that

"All works associated with the development shall be confined to the proposed development site. No filling or, or encroachment onto, nearby coastal habitat with the Special Area of Conservation shall occur. Reason: To ensure the integrity and preservation of Natura 2000 sites and their qualifying interests".

These works are clearly encroaching on the adjoining coastal habitat with the special area of conservation and are therefore inconsistent with these planning permission conditions and cannot be an exempt development.

Article 9 (1)(a)(iii) provides that any such development will not be exempt if it would "endanger public safety by reason of traffic hazard or obstruction of road users"

The works obstruct several public rights of way.

The works at the point A on the map SK-01 directly obstructs the pedestrian access path from Narin Beach to Castlegoland Beach. The route of this pedestrian pathway is clearly marked on the Donegal County Council map included in Figure 3 and user of this pathway is clearly evident in Photograph 3.

Map SK-01 illustrates both the location of the works and this path and clearly illustrates how the works at the point A are a clear impediment to passage along the public pedestrian pathway.



Figure 3 – Donegal County Council Map indicating the pedestrian Public Right of Way to Narin Beach via Sweeneys Banks.

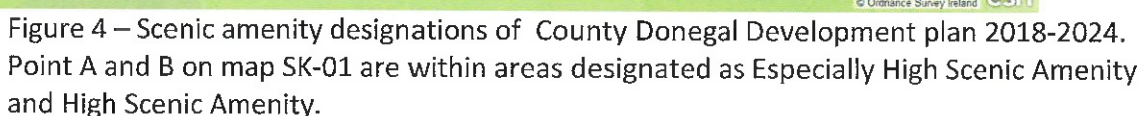
The works at the point B on the map SK-01 completely obstruct both the vehicular access and pedestrian access from the public road (road ID L-7543-2) to Castlegoland Beach. See Figure 10 which contains the relevant section of the current County Donegal Development Plan recording the public right of way to Castlegoland Beach together with Figures 11 to 14 containing various maps evidencing the location and user of the public rights of way since time immemorial.

As such, the works constitute both a traffic hazard and an obstruction to road users and cannot be an exempt development.

Article 9 (1)(a)(vi) provides that any such development will not be exempt if it interferes “with the character of a landscape, or a view or prospect of special amenity value or special interest, the preservation of which is an objective of a development plan for the area in which the development is proposed...”

A Landscape Character Assessment (LCA) for Donegal was prepared and endorsed by the members of Donegal County Council in May 2016 whose purpose is to classify and describe the landscape to provide an evidence base of the landscape’s components to assist in planning formulating the policy of the current County Donegal development plan 2018-2024. The landscape of Donegal was categorised into three layers of value namely areas of ‘Especially High Scenic Amenity’, ‘High Scenic Amenity’ and ‘Moderate Scenic Amenity’.

Figure 4 is an excerpt from the current County Donegal Development Plan showing the designation for the land the subject of this application. The works at the point A on map SK-01 are in an area designated as High Scenic Amenity while the works at the point B on map SK-01 are in an area designated as both Especially High Scenic Amenity and High Scenic Amenity. Thus, the entirety of the works are comprised within either an Especially High Scenic Amenity or High Scenic Amenity.



Objectives and Policies regarding The Natural Heritage

NH-0-5: To protect, manage and conserve the character, quality and value of the landscape having regard to the proper planning and development of the area, including consideration of the scenic amenity designations of this plan, the preservation of views and prospects and the amenities of places and features of natural, cultural, social or historic interest.

Policies

NH-P-6: It is a policy of the Council to protect areas identified as Especially High Scenic Amenity on Map 7.1.1: 'Scenic Amenity'. Within these areas, only developments assessed to be of strategic importance or developments that are provided for by policy elsewhere in this Plan shall be considered.

NH-P-8: It is the policy of the Council to safeguard the scenic context, cultural landscape significance, and recreational and environmental amenities of the County's coastline from inappropriate development.

NH-P-9: It is the policy of the Council to manage the local landscape and natural environment, including the seascape, by ensuring any new developments do not detrimentally impact on the character, integrity, distinctiveness or scenic value of the area.

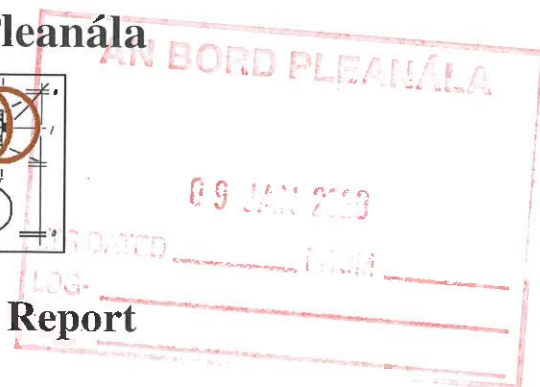
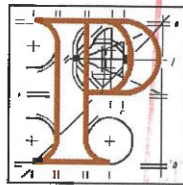
NH-P-13: It is a policy of the Council to protect, conserve and manage landscapes having regard to the nature of the proposed development and the degree to which it can be accommodated into the receiving landscape. In this regard the proposal must be considered in the context of the landscape classifications, and views and prospects contained within this Plan and as illustrated on Map 7.1.1: 'Scenic Amenity'.

In addition as can be seen from Figure 5 part of the works at the point A on map SK-01 are located within the Blue Flag area of Narin Beach, which clearly runs counter to the following policy in the current County Donegal Development Plan:

Marine resource and coastal management policies:

MRCM-P-10: It is a policy of the Council to ensure that development proposals do not adversely compromise the recreational amenity and environmental quality of coastal areas including Flag Beaches, Natura 2000 sites and areas of Especially High Scenic Amenity.

An Bord Pleanála



Inspector's Report

Referral Reference Number: 05B.RL2252

Subject of Reference: Whether site excavation works to accommodate regrading and alteration to golf course layout is or is not exempted development.

Location: Narin, Portnoo, County Donegal

Referrer: An Taisce, The Tailor's Hall, Back Lane, Dublin 8.

Respondent: Narin and Portnoo Golf Club, Narin, Portnoo, County Donegal.

Site Inspection: 8th September, 2005

Inspector: Ruairi Somers

1.0 SITE LOCATION AND DESCRIPTION

Narin and Portnoo Golf Course lies 11 kilometres north-west of Glenties and 20 kilometres north-west of Donegal town. It is located along the west coast of Donegal and on the east side of Tramore Strand. The latter virtually borders the course along its main axis, which runs roughly from south-west to north-east.

The entrance to the golf course is located at the south-western end and here the access, parking and club house facilities are located. The 18 holes extend over a distance of almost 2 kilometres north-eastwards whereas the width of the course is quite narrow and typically of the order of 200-300 metres. The topography of the course varies significantly from the coastal boundary inland. The coastal zone is characterised by high sand dune type terrain with steep cliffs falling to the strand further west (or north). Advantage has been taken of these high dunes to provide effective teeing areas.

2.0 NATURE OF WORKS

Previously it would appear that the course was primarily located towards the inland portions of the club's landholding i.e. towards the east, south-east and south and leaving a more extensive dune system between the "operative" course and the coast. Thus, an extract from the tenth edition of **Golf Days – Golf Courses of Ireland** (1999) would appear to identify a relatively untouched area of perhaps an average width of 50 metres or so separating the course from Tramore Strand. In the period since 1999 and particularly since 2004 the course has been significantly reorganised and the club's landholding more fully availed of so as to provide greater separation between fairways, longer holes, etc.

Reorganisation of the course has involved encroachment into the "pristine" dunes and is well illustrated in comparing the new and old locations of the 14th and 15th holes as between the "**Golf Days**" (1999) layout and the submitted layout of April 2004. The 15th Hole now runs parallel to Tramore Strand and is set back a mere 30-40 metres from it. It would appear that the relatively "untouched" dune system was up to 90 metres in width previously in this vicinity. The newly constructed hole would seem to have involved extensive excavation works so that the fairway and playline now extend along a south-west to north-east axis and comprise of a valley like feature with the higher sand hills located both towards the west and east.

3.0 REFERRER'S CASE

An Taisce explain that concern at the impact of excavation on this site came to its attention through press reports in August-September 2004 and that they complained to Donegal County Council on 2nd September 2004. Subsequently, An Taisce lodged a Section 5 reference to the Council requesting a determination as to whether extensive works comprising site excavation and realignment of the golf course layout around the identified areas of the golf club's landholding were exempted development or not. On 6th May 2005

Donegal County Council decided that site excavation works to accommodate regrading and alteration to the golf course layout was exempted development. An Taisce now seek a determination from An Bord Pleanála that the works carried out to the golf course were not exempted development and required a lodgement of a planning application because of the location in a Priority Habitat under the E.U. Habitats Directive.

An Taisce submit a document entitled **“Narin Golf Course Extension – Vegetation Assessment”** dated 27th May 2005 which was prepared by Ralf Sheppard, Environmental Consultant. Mr. Sheppard visited the dune complex on 28th August, 2004 after works had commenced and photographs included show two parallel fairways constructed into an area shown by Mr. Sheppard to have previously been untouched by the golf course.

Mr. Sheppard identifies the major part of the site as comprising shifting and fixed dunes which are scheduled under Annex 1 of the EU Habitats Directive as Priority Habitats, notwithstanding the lack of specific Special Area of Conservation designation. It is Mr. Sheppard’s contention that this work has undermined the status of areas of dune, which would have warranted designation as Special Area of Conservation.

An Taisce quote from an Irish Times Report of 30th August, 2004 by Richard Narin and Paddy Woodworth. This states the following:-

“Since last August, three large mechanical diggers have been tearing at a line of sand dunes in west Donegal... The golf club at Narin – Portnool beach is busy extending its links course from the flat area inland into the high sand dunes near the beach.”

4.0 RESPONDENT’S CASE

In a ten page report the respondent sets out the background to the declaration and referral sought by An Taisce from Donegal County Council and An Bord Pleanála respectively, in relation to the subject works. It is the contention of the Narin and Portnool Golf Club that the works involved were related to the maintenance and management of its course especially as they relate to “alterations to the layout thereof” as permitted under Class 34 of the Planning and Development Regulations 2001.

A golf course is not only the tees, the greens and the fairways but also and crucially the areas of ‘rough’. These are generally sections of the course which have ponds, forests, dunes and the such like that are less manicured than the fairways. However, nevertheless if the ball lands in such areas a player, if the ball can be located, is entitled to play the shot therefrom. These areas are not out of bounds nor are they lands that are kept free from the playing area in the interest of safety to those outside the site. The subject works being complained about were on lands that were part of the playing area of the golf course. It is totally incorrect for An Taisce to seek to suggest that the grounds of this golf

course are being extended as this would suggest that the grounds now being used were never part of the golf course.

Class 34 seeks to allow for the proper management and maintenance of the golf course but more especially alteration to its overall layout. This was the work that was undertaken by the club last summer. There was no extension of the course rather an alteration to its overall layout which involve lands which were part of the playing surface of the course.

5.0 PLANNING AUTHORITY'S RESPONSE

In a letter of the 29th June 2005 Donegal County Council made the following points in response to the referral:-

- the Planning Authority wish to reiterate that the site of the works in question do not lie within a candidate Special Area of Conservation and that the National Parks and Wildlife Section of the DOEHLG informed the Planning Authority that the works posed no threat to the adjoining candidate Special Area of Conservation;
- the works to the golf course have been carried out on lands from which players were always entitled to play shots and thus the works comprise of alterations to the layout of the existing course and thus are exempted development.

6.0 ASSESSMENT

Under Class 26 of Part 1 of the Third Schedule to the **1977 Planning and Development Regulations** development consisting of the laying out and the use of land as a golf course incorporating parking space for not less than 24 cars was exempted development i.e. that is setting aside the restrictions on exemption under Article 11. In sharp contrast Class 34 of Part 1 of Schedule 2 of the **Planning and Development Regulation 2001** would seem to restrict golf course related development to comparatively minor works associated with maintenance and management. The precise wording of Class 34 is as follows:-

“Works incidental to the maintenance and management of any golf course ..., including alterations to the layout thereof, excluding any extension to the area of a golf course ...”

It is An Taisce's case that the extensive works comprising site excavation and realignment of the golf course layout involves extension to the area of the golf course and referring to, for example, the addition of the high dune area to the north-east and the two parallel fairways centrally located in the golf club lands within dune areas previously untouched by the golf course. The respondent considers that this view suggests that a golf course is restricted to the tees, the

putting area and the fairways whereas a golf course also and crucially includes the areas of 'rough'.

In response to a request from An Bord Pleanála Fáilte Ireland in a letter dated 17th August 2005 states the following:-

"It appears, therefore that the question of whether or not the works are to be considered exempted development, rests on the determination of whether or not the area of the proposed works were already within the operational area of the golf course, in other words, whether the lands were already being used as a golf course. It is noted that the County Council (letter 27th June 2005) states that "the works to the golf course have been carried out on lands from which players were already always entitled to play shots". However, it is not considered that this in itself provides sufficient evidence to determine whether or not the lands were previously part of the golf course. It is suggested that it must also be established whether these lands are subject to the same management regime as the rest of the course (i.e. irrigation and fertilisation practices). If it is found that the lands that are subject to the works had a different management regime before the works than they do after the works, then it is considered that the works constitute an extension to the golf course and should therefore require planning permission".

In a response to the above submission from Fáilte Ireland the applicant states that in the management of the golf course, which is a links golf course, no irrigation or fertilisation takes place on the fairways or rough and very little irrigation takes place on the greens. It would appear therefore that in the applicant's view this addresses the submission by Fáilte Ireland and thus the rough areas are part of the golf course since they are subject to the same management regime.

In a letter dated 25th August 2005 An Taisce in the context of the earlier submission from Narin and Portnoo Golf Club and in an effort to lend further clarification to Class 34 considers that all works have to be within the "fairways alignment area that was playable on the old course". In contrast An Taisce feels that the plan confirms that significantly new alignments took place.

At the outset it is acknowledged that there is some difficulty in defining the extent of works which have been carried out to this golf course relative to that which existed prior to, for example the Planning and Development Regulations 2001 coming into effect. In this respect I concur with the suggestion by An Taisce that the drawing marked "Proposals for Development" by Eddie B. Connaughton Ltd and dated April 2004 is unsatisfactory in terms of showing the difference between the previous and current golf courses and therefore indicating the extent of development works the subject of this referral.

Reference has already been made to the golf course layout as shown in the 'Golf Days' publication, which existed in 1999. Comparing the then existing golf course to that set out in the 2004 drawing would indicate a significant

reorganisation and extension to the course. In this respect the following is noted:-

- The old course was a par 69 (i.e. in 1999) - the 2004 course (i.e. prior to works) was a par 70 - while the proposed/new golf course is 72.
- In 1999 the old golf course had a total length of 5272 metres (5,766 yards) - the 2004 course had a length of 5,521 metres - while the proposed/new course has a length of 6,209 metres. The difference in length following the post-2004 works represents an increase of 12%. If all the lengthening works took place after the coming into operation of the 2001 Regulations then the applicant is deeming an increase of the order of 18% as not comprising an "extension".

It is acknowledged that there is some ambiguity in the concept of "the area of a golf course" referred to in Class 34. Thus, there may be a limited basis to the view of Donegal County Council and the respondent that the 'extension' was not an extension because of simply bringing into the full 'hole' set up of the course - areas which were/are an inherent part of the course. This, for example, might apply to certain parts of the reorganised course such as perhaps the 18th hole. The April 2004 drawing indicates that the hole is being extended from 340 to 365 metres but this may be taking place within what might be considered the functional area of the golf course.

In contrast to the view of the applicant it is considered that both the submissions of Failte Ireland and that of An Taisce dated 25th August 2005 do serve to apply some insight into the 'area of a golf course' for the purposes of Class 34. Both submissions would tend towards the conclusion that the works are not exempted and the implication by the Golf Club that no management has been applied to the newly 'occupied' areas, for example, towards the north-western side of the centre of the course seems at variance with the apparently different grass regimes which exist on the new course areas as opposed to the untouched/less touched sand dune areas. An example of the veracity of both Failte Ireland and An Taisce's perspective is the 15th hole as indicated on the respondent's drawing as opposed to its previous location shown in the **Golf Days** publication. This hole is almost entirely developed in a sand dune area, which could hardly be regarded as part of even the 'rough' areas of the previous course given the various tee, green, and fairway positions as indicated in the old layout. In short the contentions of both Donegal County Council and the respondent that the works carried out fall into Class 34 do not stand up to scrutiny. This is particularly so when the word "alteration" is taken in the context of being incidental to "maintenance and management".

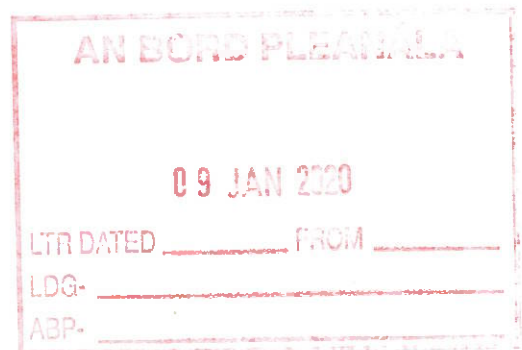
The determination of the full extent of the works carried out by Narin and Portnoo Golf Club and which would not fall within a reasonable interpretation of Class 34 is not possible in the absence of adequate drawings of the 'before and after' situations. In a letter of the 9th June 2005 An Bord Pleanála requested Donegal County Council to submit to it any information which would be relevant to the referral. Maps setting out the nature and extent of the works deemed to be exempted development were not forwarded so that it would appear that the informational analysis on which the Planning Authority came to its

decision for the purposes of the Section 5 declaration was limited. Moreover, the Department of the Environment, Heritage and Local Government in a submission to An Bord Pleanála dated 18th August, 2005 indicate that a recorded monument (DGO64-004-Midden) is located in the midst of the golf course. Again, no evidence was submitted by the County Council indicating a consideration with regard to archaeology and the golf course works given the restrictions on exemption under Article 9(1)(vii) of the Planning and Development Regulations 2001 and the archaeological policies outlined in Section 2.6.4 of the County Donegal Development Plan 2000 (copy enclosed).

7.0 CONCLUSION

Having regard to the Class 34 of Part 1 of Schedule 2 of the Planning and Development Regulations 2001 as amended, I conclude that works carried out to the Narin and Portnoo Golf Course were not incidental to maintenance and management and comprised of an extension to the area of the golf course and thus were not exempted development.

Ruairi Somers
Senior Planning Inspector
27th September, 2005



YM



**Comhairle Contae
Dhún na nGall**
Donegal County Council

**FOR
INFORMATION**

www.ccdhunnangall.ie www.donegalcoco.ie

Ref. No: S5 19/23

6th December, 2019

Bronagh Heverin
Castlegoland
Portnoo
Co Donegal
F94 T674

AN BORD PLEANALA

09 DEC 2019

LTR DATED _____ FROM _____

LDG- _____

ABP- _____

Re: Section 5 – Erection of 4 stand electric fence along the perimeter of privately owned Narin and Portnoo Links and across public property at Narin Beach and Castlegoland Beach, Narin, Portnoo, Co Donegal.

A Chara,

I refer to your request received on 25th September, 2019 as above under Section 5 of the Planning and Development Act, 2000 (as amended). Same has now been decided and I now issue to you herewith the Council's Declaration thereon. You are now advised that, in accordance with Section 5 (3) (a) of the Planning & Development Act, 2000 (as amended) where a Declaration is issued, any person issued with such a Declaration may, on payment to An Bord Pleanála of such fee as may be prescribed, refer a Declaration for review by the Board within 4 weeks of the date of issuing of the Declaration.

Mise, le meas,



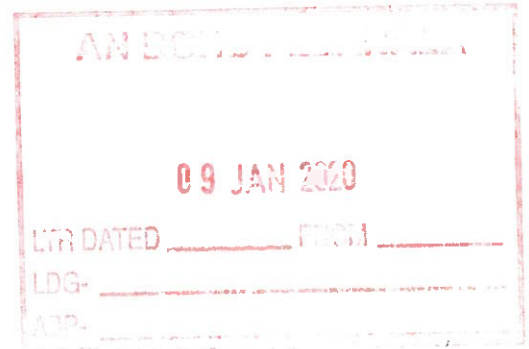
for Senior Planner
Planning Services
/mp

Cuir freagra chuig: Áras an Chontae, Leifear, Contae Dhún na nGall, Éire F93 Y622
Please reply to: County House, Lifford, Co. Donegal, Ireland F93 Y622

Planning and Development Acts, 2000 – 2018
(Declaration and Referral on Development and Exempted Development)

DECLARATION

Chief Executive's Order No: 2019PH2445
Reference No: S5 19/23
Name of Requester: Bronagh Heverin
Castlegoland
Portnoo
Co Donegal
F94 T674



Summarised Description of development the subject matter of request:

Erection of 4 stand electric fence along the perimeter of privately owned Narin and Portnoo Links and across public property

Location of Development:

Narin Beach and Castlegoland Beach, Narin, Portnoo, Co Donegal.

IT IS HEREBY DECLARED THAT THE SUBJECT MATTER OF THE REQUEST AS ABOVE –

IS Development
IS IN PART Exempted Development
IS IN PART NOT Exempted Development

WITHIN THE MEANING OF THE ABOVE ACT

The Planning Authority, in considering this referral, had regard particularly to:

- (i) Sections 2(1), 3(1) and 177U of the Planning and Development Act 2000 (as amended),
- (ii) Class 4, Schedule 2, Part 3, (Rural Exemptions) of the Planning & Development Regulations, 2001 (as amended), and
- (iii) Article 9 (vi), (ix), (x), and (xi) of the Planning & Development Regulations 2001 (as amended)

And concluded that:

THE PROPOSAL:

Where the fence is located on land designated as High Scenic Amenity within the County Development Plan 2018-2024 (from the point of the gated access at the end of the L-7543-2 public road to a point where the fence crosses on to land categorised as an Especially High Scenic Amenity area) IS DEVELOPMENT within the meaning of the Planning & Development Act, 2000 (as amended) and IS EXEMPTED DEVELOPMENT as it comes within the scope of Class 4, Schedule 2, Part 3, (Rural Exemptions), of the Planning & Development Regulations 2001 (as amended).

AND THE PROPOSAL:

Where the fence line crosses over lands that are categorised in the County Development Plan 2018-2024 as being an Area of Especially High Scenic Amenity IS DEVELOPMENT within the meaning of the Planning & Development Act, 2000 (as amended) and IS NOT EXEMPTED DEVELOPMENT as the fence is subject to restrictions set under Article 9 (vi) and (xi) of the Planning & Development Regulations 2001 (as amended).

DATED THIS 6th DAY OF DECEMBER, 2019

L. O'Connell

**FOR SENIOR PLANNER
PLANNING SERVICES**

AN BORD PLEANALA	
09 JAN 2020	
LTR DATED _____	FROM _____
LDG- _____	
ASP- _____	



Figure 5: Map of Blue Flag area of Narin Beach confirming works at the point A on map SK-01 are located within the Blue Flag area.

The works clearly constitute an interference within the context of Article 9 (1)(a)(vi) and cannot be an exempt development.

Article 9 (1)(a)(vii) provides that any such development will not be exempt if it consists of or comprises “the excavation, alteration or demolition (other than peat extraction) of places, caves, sites, features or other objects of archaeological, geological, historical, scientific or ecological interest the preservation of which is an objective of a development plan for the area in which the development is proposed...”

In the current County Donegal development plan 2018-2024 the overriding aim in relation to Natural Heritage is “*To conserve, protect and manage the County’s natural heritage for future generations and encourage appreciation and enjoyment of these resources*” (P125).

These works would comprise an excavation, alteration or demolition of a place, the preservation of which is covered by several objectives in the current County Donegal Development Plan. These objectives include:

Key strategic objectives:

- S-O-6:** To protect, enhance and appropriately harness the unique quality and diversity of the environment in the County, through a wide range of measures, supported by proper planning and sustainable development.
- S-O-9:** To implement the policies of the Development Plan.

Natural heritage objectives:

- NH-O-1:** To protect, sustainably manage and enhance the rich biodiversity of County Donegal for present and future generations.
- NH-O-2:** To comply with Article 6 of the Habitats Directive (92/43/EEC) and have regard to the relevant conservation objectives, management plans, qualifying interests and threats to the integrity of Natura 2000 sites.

NH-O-3: To maintain the conservation value of all existing and/or proposed SACs, SPAs, NHAs and RAMSAR sites including those plant and animal species that have been identified for protection under the EU Habitats Directive (92/43/EEC), EU Birds Directive (79/409/EEC as amended by 2009/147/EC), the Wildlife Acts (1976-2014) and the Flora Protection Order (2015). **NH-O-4:** To ensure the protection and management of the landscape in accordance with current legislation, ministerial and regional guidelines and having regard to the European Landscape Convention 2000. **NH-O-5:** To protect, manage and conserve the character, quality and value of the landscape

Natural heritage Policies:

NH-P-1: It is a policy of the Council to ensure that development proposals do not damage or destroy any sites of international or national importance, designated for their wildlife/habitat significance in accordance with European and National legislation including: SACs, Special SPAs, NHAs, Ramsar Sites and Statutory Nature Reserves.

NH-P-5: It is a policy of the Council to require consideration of the impact of potential development on habitats of natural value that are key features of the County's ecological network and to incorporate appropriate mitigating biodiversity measures into development proposals.

Archaeological heritage objective:

AH-O-1: To conserve and protect the County's archaeological heritage for present and future generations.

Archaeological policy:

AH-P-4: It is the policy of the Council to protect where appropriate, the character and setting of any unrecorded archaeological object or site.

Tourism objectives:

TOU-O-2: To protect and enhance Donegal's landscape and natural environment as a fundamental resource which underpins the county's tourism product.

TOU-O-7: To manage development in a manner which supports and sustains the Wild Atlantic Way Tourism initiative.

TOU-O-9: To support the development of new, and protect the functionality of existing, Greenways, walking and cycling routes as keys components of an overall green tourism infrastructure and as standalone tourism products in their own right.

Tourism policies:

TOU-P-1: It is a policy of the Council to ensure that tourism related development proposals do not negatively impact on the natural landscape, environmental habitats and built heritage of the county.

TOU-P-5: It is a policy of the Council not to permit development which would materially detract from visual and scenic amenities along the route of the Wild Atlantic Way.

TOU-P-9: It is policy of the Council to:

- Conserve lands zoned Amenity/Green space/Open Space in settlement frameworks/urban areas for exclusively for public amenity/recreational use.
- Protect the routes of, not permit development which would hinder the creation of, and otherwise positively facilitate the development of, future 'Greenways', walking and cycling routes including those identified in this Plan.
- Protect the extent, quality, visual setting and functionality of existing 'Greenways', walking and cycling routes including those identified in this Plan.

Marine resource and coastal management objectives:

MRCM-O-2: To safeguard and improve and the health of our Marine ecosystem by:

- Protecting the qualifying habitat and species of Natura 2000 sites through Appropriate Assessment of development proposals.
- Maintaining and improving water quality in our estuaries and seas by implementing River Basin Management Plan and any future programmes under the Marine Strategy Framework Directive.
- Ensuring that there is; sufficient sewage treatment capacity to serve development in urban areas, adequate on-site effluent treatment to EPA standards for developments in rural/unserved areas, and adequate pollution control measures for commercial/industrial development.
- Seeking best practice measures in relation to the carrying out of site preparation and construction works for developments in close proximity to rivers and the sea.

MRCM-O-3: To manage our coastal environment in a sustainable manner by:

- Avoiding new development in areas at risk from Coastal Flooding in line with the flooding policies of this Plan.
- Managing coastal change in a manner which accepts that coastal erosion/sea level rise is a natural and/or inevitable process and does not permit/provide coastal protection works; in areas subject to significant long term coastal erosion/change or sea level rise unless there is overriding reason of public interest to do (e.g. built up urban areas), where it would damage the visual, scenic or environmental amenities of the area or where it would have a significant impact on natural coastal geomorphological processes and systems.

- Managing development in a manner which protects sensitive coastal environments (e.g. dune environments) and undertaking coastal zone management projects.
- Ensuring that new marine infrastructure developments (e.g. pier, breakwaters) are located, sited and designed in a manner which has minimal impact on natural Coastal Geomorphological process.

MRCM-O-7: To manage the marine resource and coastal environment in a co-ordinated and collaborative manner by engaging with stakeholders and agencies, and utilising managements tools such as Integrated Coastal Zoned Management.

Marine resource and coastal management policies:

MRCM-P-6: It is a policy of the council not to permit developments which will have a significant impact on natural coastal geomorphological processes and systems (e.g. longshore drift, tidal currents, sediment budgets) or give rise to significant coastal change. Coastal development shall be required to submit appropriate evidence based assessments which demonstrate compliance with this policy.

MRCM-P-9: It is a policy of the Council to ensure that development proposals in coastal areas do not significantly impact on, and incorporate appropriate measures to protect, sensitive coastal environments (e.g. beaches, sand dunes and other soft shorelines).

MRCM-P-10: It is a policy of the Council to ensure that development proposals do not adversely compromise the recreational amenity and environmental quality of coastal areas including Flag Beaches, Natura 2000 sites and areas of Especially High Scenic Amenity.

Community Culture and the Gaeltacht objectives

CCG-O7: To promote, protect, harness and sustainably develop the Culture of Donegal by inter alia: Recognising and protecting the landscape and built heritage of Donegal as key elements of our culture.

Community Culture and the Gaeltacht objectives

Health, Sport and Recreation

CCG-P-12: It is a policy of the Council to ensure that relevant development proposals have appropriate regard for walking and cycling which will promote physical activity and reduce car use.

CCG-P-13: It is policy of the Council to:

- Conserve lands zoned Amenity/Green space/Open Space in settlement frameworks/urban areas for exclusively public amenity/recreational use.
- Protect the routes of, not permit development which would hinder the creation of, and otherwise positively facilitate the development of, future Greenways, walking and cycling routes including those identified in this Plan.
- Protect the extent, quality, visual setting and functionality of existing Greenways, walking and cycling routes including those identified in this Plan.

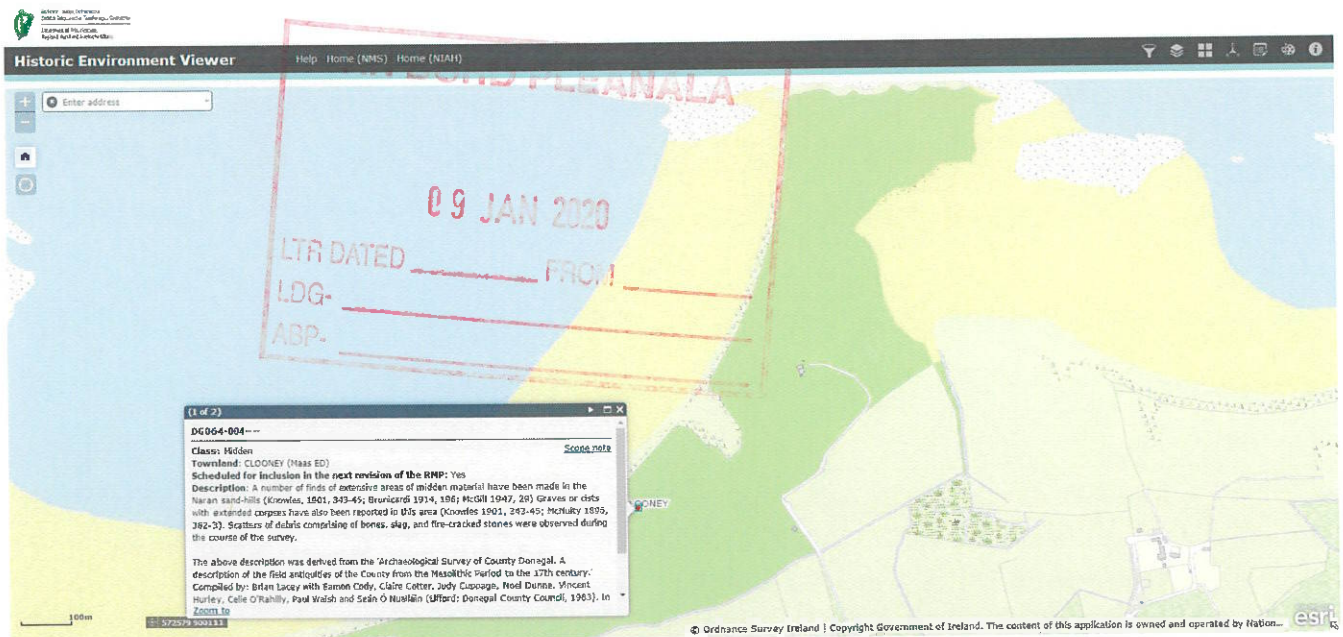


Figure 6: Archaeological map from Ordnance Survey Ireland as of 8th October 2019 confirming the archaeological heritage of the area.

The area surrounding the works has a rich historical and archaeological heritage which is substantiated by the Archaeological Report contained in Appendix A and the archaeological map contained in Figure 6.

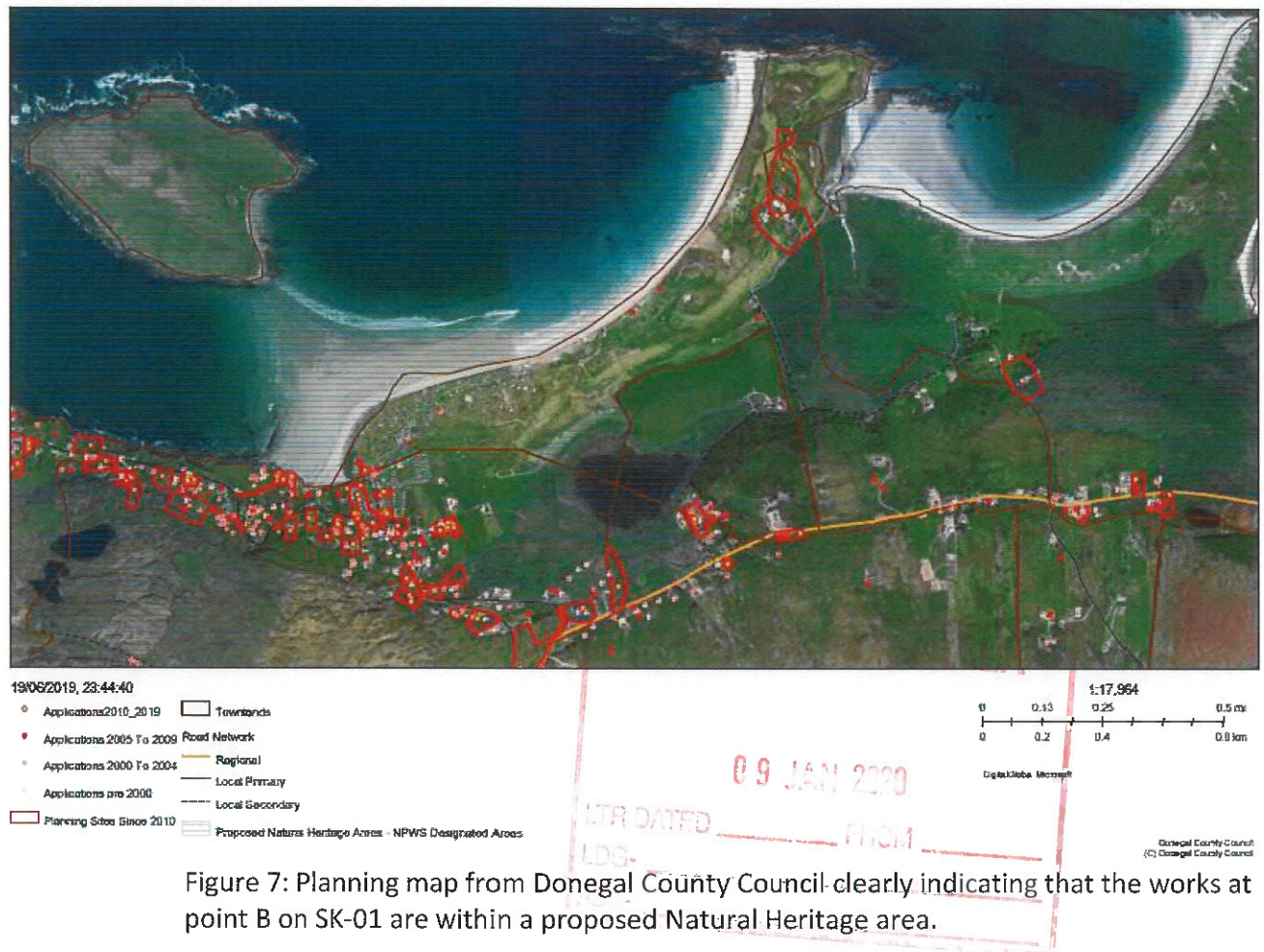


Figure 7: Planning map from Donegal County Council clearly indicating that the works at point B on SK-01 are within a proposed Natural Heritage area.

The rich natural heritage of the area surrounding the works has been confirmed by Donegal County Council as evidenced by Figure 7.

In terms of ecology, the Natura 2000 network is a network of important ecological sites across the European Union made up of Special Protection Areas (SPAs) and Special Areas of Conservation (SACs) (all of these and related terms are defined on pages 125-126 of the current County Development Plan). The purpose of designating areas is to ensure that they are environmentally sustainable and that activities both of human and of nature will be controlled to ensure, inasmuch as is possible, that they do not affect the integrity of the area or its habitats and that it will not adversely affect the overriding EU objective of protected species conservation and biodiversity of species. In planning terms where development is contemplated which might possibly have an adverse effect on the integrity of a Natura 2000 site or on its conservation objectives, a Natura impact statement is required, which, if complete and objective, is followed by an 'appropriate assessment' by the planning authority or the board.

Figures 7 and 8 contain maps delineating SAC 197 West of Ardara/Maas Road SAC. There is a discrepancy between the maps, in that the map provided by Ordnance Survey Ireland (Figure 8) clearly include the public ground at the point marked B on map SK-01 as part of SAC 197, this section is then excluded in the map of SAC 197 from the National Parks and Wildlife Services in Figure 9. The correct status of these grounds is currently being ascertained, however in the interim it is clear that both

points marked A and B are at a minimum immediately adjoining an SAC and as such are a site with ecological interest within Article 9 (1)(a)(vii).

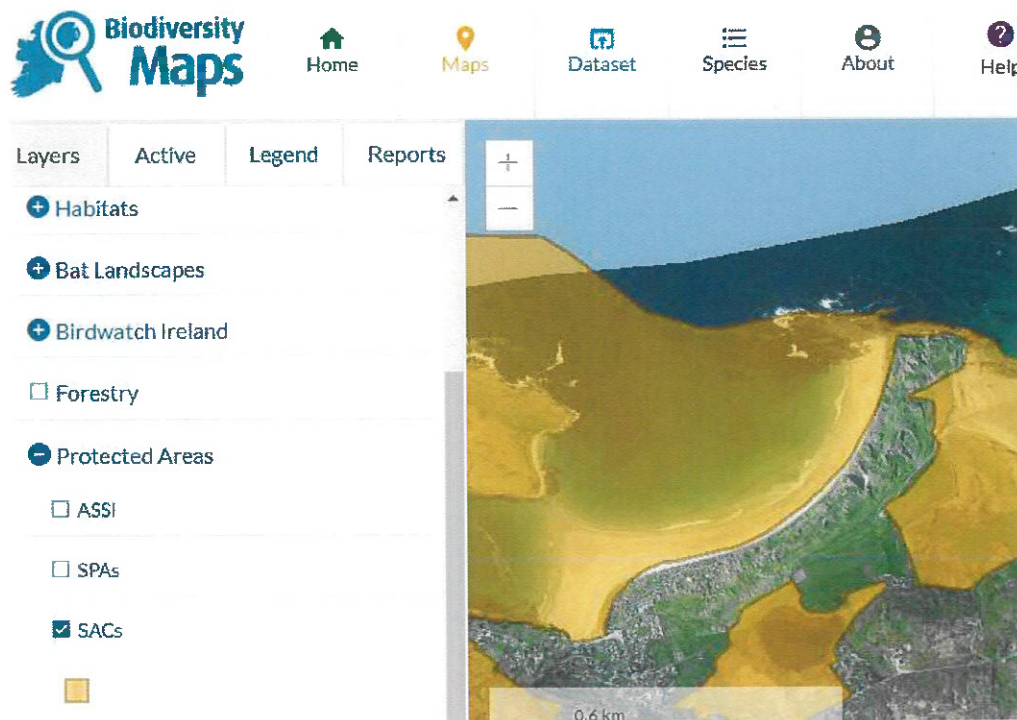


Figure 8: Biodiversity map from Ordnance Survey Ireland as of 7th October 2019 confirming the works at the point A on map SK-01 to be within an SAC and the works at the point B on map SK-01 to be immediately adjoining an SAC.

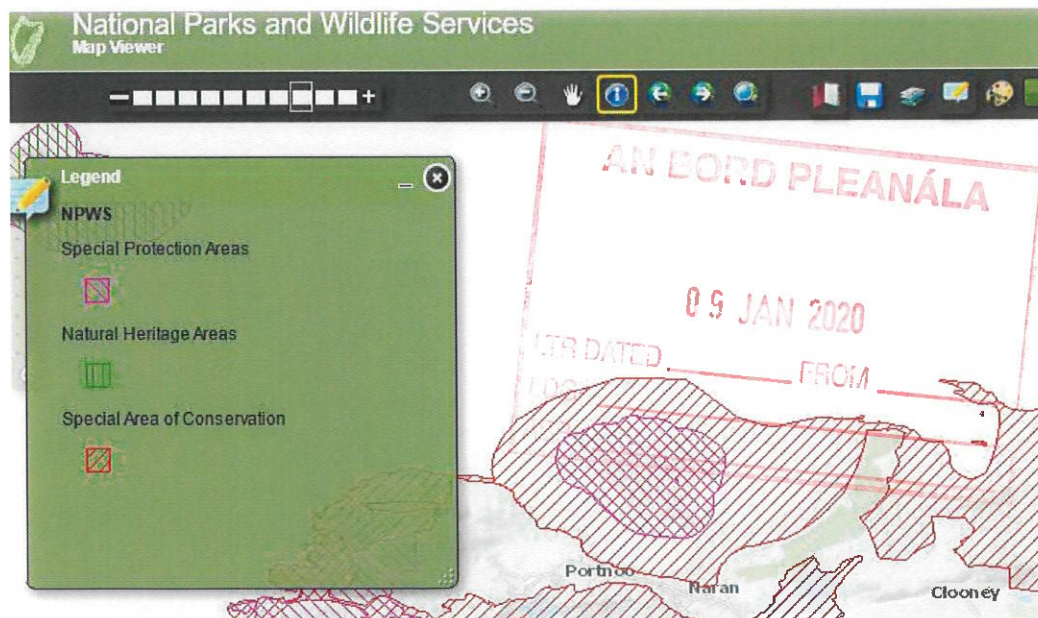


Figure 9: Map from the National Parks and Wildlife Service as of 7th October 2019 confirming the property the subject of this application to be immediately adjoining an SAC.

A sample of correspondence filed with Donegal County Council confirming acknowledgement and appreciation by the public of the rich ecological interest in these grounds is contained in Appendix B.

Thus, as these works would comprise an excavation, alteration or demolition of a place the conservation, protection and management of which is an aim of the current County Donegal Development Plan which is reiterated and reinforced by several objectives in the current County Donegal Development Plan, they cannot be an exempt development.

Article 9 (1)(a)(viii) provides that any such development will not be exempt if it consists of or comprises "the extension, alteration, repair or renewal of a non-authorised structure or a structure the use of which is an unauthorised use"

Thus in the event that any part of the works is held to be a development requiring planning permission, then that part of the works is unauthorised, and any extension is subject to this restriction and therefore equally cannot be an exempt development.

Article 9 (1)(a)(xi) provides that any such development will not be exempt if it obstructs "any public right of way".

The works obstruct several public rights of way. The works at the point marked A on map SK-01 directly and unnecessarily obstruct the pedestrian access path from Narin Beach to the golf course gate (the route of this pedestrian path is shown on the map contained in Figure 3). The works at the point marked B on map SK-01 completely obstruct both the vehicular access and pedestrian access to Castlegoland Beach. All of these public rights of access have been used from time immemorial and there is ample proof of long user by the public as of right. Please see Appendices B, C and D containing a sample of Photograph and letters evidencing this user for many years. The user of these public rights of way is also evident from inspection of the property and many of the online maps publicly available (see examples in Figures 3, 11 to 14).

Donegal County Council is obliged to protect the rights of the public to use public rights of way in its administrative area pursuant to Section 73 (11) of the Roads Act 1993. This obligation to protect public rights of way was reiterated in the Planning and Development (Amendment) Act 2010 (No. 30 of 2010) which provided for the inclusion of a new mandatory objective in development plans for the preservation of public rights of way - see copy of Circular Letter PL 09/2012 on page 19.

In addition to these statutory obligations, Donegal County Council themselves have recognised the importance of public rights of way, particularly in the context of access to beaches. In their own publication titled "Rural Beach Management A Good Practice Guide", they state on page 35 that "Any attempt by landowners of private property to block access routes to the shore along the public right-of-way should be strongly resisted." They go on to state that "Government agencies and local authorities and conservation NGOs should be acutely aware of the importance of maintaining rights of way as a means of ensuring that the public have access to the shore."

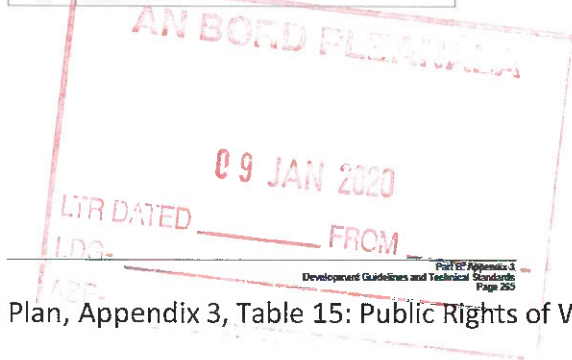
The vehicular access road is specifically listed in the list of public rights of way detailed in the current County Donegal Development Plan (at number 30 in Table 15 Appendix 3 on page 264) - see Figure 10.

Table 15 Appendix 3: Public Rights of Way

Number	Location
1.	North West end of Caddiff Beach
2.	Carraghanna Beach
3.	Glenburnie Beach
4.	Ballynarry Beach
5.	Leddon Beach, Inch Island
6.	West End of Kinnegar Beach
7.	Kinnegar Beach on West End
8.	South end of Stocker Strand
9.	Stocker Strand
10.	West Side of Ballyhiernan Beach
11.	Centre of Ballyhiernan Beach
12.	East side of Ballyhiernan Beach
13.	Point 600 yds. towards Doaghmore Beach
14.	Trafalgar Bay Beach
15.	Gortnalogage Beach
16.	Tramore Beach
17.	East end of Marble Hill Beach
18.	Breaghly Head
19.	Dunfahaghy Beach
20.	Dooley Beach
21.	Hagheradogher Beach
22.	West Pier, Bunbeg
23.	South end of Breake West Beach
24.	Hallaghbeg Beach
25.	Fishing Pier and Boat Slip on east of County Road L1463
26.	Beach West of Road L1463 at Tradeang

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Number	Location
27.	West End of Arlands Beach
28.	Haghera Beach
29.	Dooley Beach
30.	Castlegoland Beach
31.	Dunes east of Maghera Beach
32.	South End of Glencolmille Beach
33.	Beach at Malinbeg
34.	East end of Fintragh Beach
35.	Fintragh Beach
36.	West end of Fintragh Beach
37.	South End of Mullinasole Beach
38.	South end of Finner Beach
39.	Beach and Coves at Portnablagh
40.	South End of Beach at Downings
41.	Tullagh Beach
42.	Dunree Beach
43.	Dunree Beach
44.	Main Carrigart Road



Part B: Appendix 3
Development Guidelines and Technical Standards
Page 263

Figure 10 – Donegal County Development Plan, Appendix 3, Table 15: Public Rights of Way. Note No. 30 Castlegoland Beach.

It has been similarly recorded in previous County Donegal Development Plans (as far back as 1988) and other records (the Griffiths valuation map dated approximately 1841 and the historic 6 inch map included at Figures 4 and 5 record the existence of this public right-of-way). This particular right-of-way is therefore afforded the protection of section 14 of the Planning and Development Act 2000 and in particular Section 7(b). The Planning and Development Act 2000 also recognises the existence of public rights of way which have not been included in the development plan and section 7(a) confirms their validity is not adversely affected by such omission. This applies to the pedestrian right of way at Sweeney's Banks. The Public Right of Way at Sweeney's Banks is from the gate to Narin Beach via Sweeney's Banks. This right of way has been used since time immemorial, is partly shown on the Griffiths Valuation map (Figure 6) and also indicated on current Donegal County Council online Maps (Figure 3).

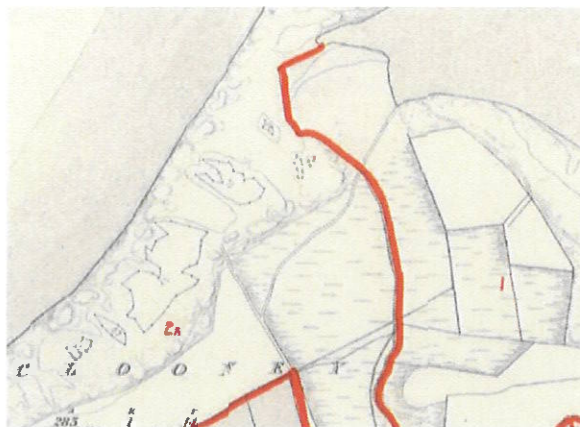


Figure 11 – Griffiths Valuation (Approx 1841) showing Public Right of Way to Castlegoland Beach

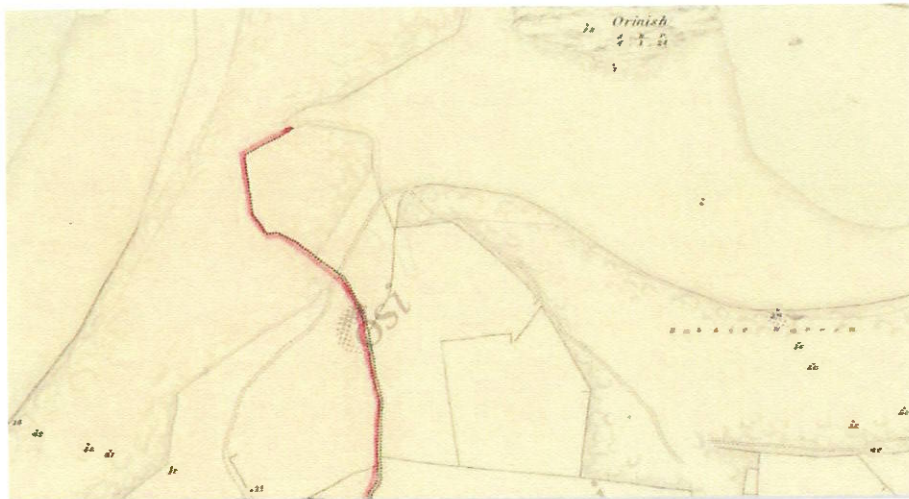


Figure 12 - Historic 6" map showing Public Right of Way to Castlegoland Beach



Figure 13 - Donegal activity map showing route to Castlegoland Beach via Golf Links gate (21 & 22) or from Narin Beach (route 5).

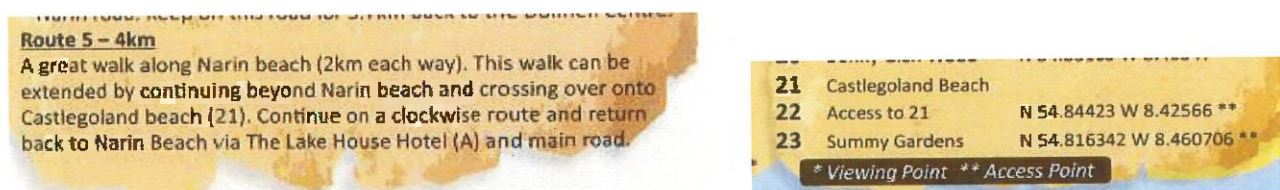


Figure 14 - Enlargement of Donegal activity map showing descriptions of route to Castlegoland Beach via Golf Links gate (21 & 22) or from Narin Beach (route 5).

The significance of the obligation of local authorities to comply with their statutory obligations under section 7 of the Planning and Development (Amendment) Act 2010 in relation to this preservation of public rights of way is reiterated in Circular Letter PL 09/2012, which reads as follows:

Circular Letter: PL 09/2012

25 October 2012

To: All County/City Managers
Directors of Planning
Regional Authority Directors
An Bord Pleanála.

Mandatory Objective on the Preservation of Public Rights of Way under the Planning and Development (Amendment) Act 2010

A Chara,

I am directed by Ms. Jan O'Sullivan, T.D., Minister for Housing and Planning, to refer to the Planning and Development (Amendment) Act 2010 (No. 30 of 2010) which provided for the inclusion of a new mandatory objective in development plans for the preservation of public rights of way.

In this regard, planning authorities are reminded of their statutory obligations under Section 7 of the Planning and Development (Amendment) Act 2010 which was commenced on 5 October 2012, amending Section 10 (Content of Development Plans) of the Planning and Development Acts, requiring, *inter alia*, the inclusion of a mandatory objective in the development plan for:

“(o) the preservation of public rights of way which give access to seashore, mountain, lakeshore, riverbank or other place of natural beauty or recreational utility, which public rights of way shall be identified both by marking them on at least one of the maps forming part of the development plan and by indicating their location on a list appended to the development plan,”

The inclusion of public rights of way in the mandatory objectives under Section 10 is recognition of the role the development plan in their preservation. The Department, therefore, welcomes the progressive adoption by planning authorities of this new mandatory objective and takes this opportunity to remind all planning authorities to fulfill their statutory obligations as part of the statutory review of the development plan thus ensuring the timely adoption of this new mandatory objective and the preservation of public rights of way in their development plans. Planning authorities will also be aware that they can avail of the development plan variation process, as appropriate, where such review is not imminent.

The Department remains available to assist planning authorities with the ongoing adoption of the foregoing mandatory objective for the preservation of public rights of way.

Is mise le meas,

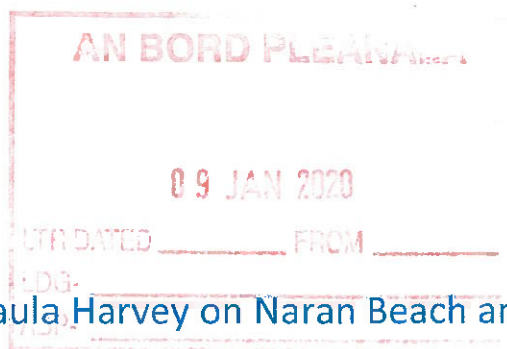
Philip Nugent
Principal Officer
Planning and Housing (Finance and Policy Development)

As such, the works constitute significant obstruction to several public rights of way which Donegal County Council have a statutory obligation to protect and cannot be an exempt development.

APPENDICES

APPENDIX A

Archaeological Report of Paula Harvey on Naran Beach and Cashelgolan Beach areas.



APPENDIX B

Sample of correspondence filed with Donegal County Council confirming acknowledgement by the public of the rich ecological interest in these grounds.

APPENDIX C

Sample letters proving habitual public user of the public rights of way obstructed by the works.

APPENDIX D

Photographs proving the existence and extensive user (see clearly worn tracks) of the Public Pedestrian Right of Way through Narin Portnoo Links crossing directly through the point A as marked on map SK-01.

APPENDIX E

Photographs proving the existence and extensive user (see clearly worn tracks) of the Public Pedestrian and vehicular Rights of Way through Narin Portnoo Links and public grounds crossing directly through the point B as marked on map SK-01.

APPENDIX F

Table from Drawing SK-01, which provides a broad overview of the position vis-à-vis planning and the works - refer to Drawing SK-01 for location of references A and B.

APPENDIX A

Archaeological Report on Naran Beach and Cashelgolan Beach areas

LTR DATED

09 JAN 2020

FROM

The area that covers the immediate vicinity of Naran and Cashelgolan also has to take into account the rich archaeological, cultural and historical environment of the hinterland. That includes the two identified sites of middens (DG064-004--) and a mound (DG065-011002-) in the townlands of Clooney and Cashelgolan. These are the known archaeology of the area. As with any archaeological investigations, there is always the potential for future discoveries. The proximity of the 6th century St. Conall's monastic settlement on Inishkeel Island and the 'Chapel of Ease' at Kilkenny church site (DG065-014002-) and the various references to the turas to and from both indicate that a route along Naran Strand to Carrigfadda and over the headland to Cashelgolan was in existence for over 1,400 years. The fact that a standing stone was uncovered at Ballinreavy (DG073-053---) and the one now covered at (DG064-008----) at Naran beach are a significant part of the cultural, built and national and international significance of this area.

There are many archaeological artifacts collected over the years from this area, some of which are in private collections, others in the national collections.

From the 'Archaeological Survey of County Donegal (1983. A description of the field antiquities of the County from the Mesolithic Period to the 17th century.' Compiled by: Brian Lacey with Eamon Cody, Claire Cotter, Judy Cuppage, Noel Dunne, Vincent Hurley, Celie O'Rahilly, Paul Walsh and Seán Ó Nualláin (Lifford: Donegal County Council, 1983). In certain instances the entries have been revised and updated.

DG064-004--

Class: Midden

Townland: CLOONEY (Maas ED)

Scheduled for inclusion in the next revision of the RMP: Yes

Description: A number of finds of extensive areas of midden material have been made in the Naran sand-hills (Knowles, 1901, 343-45; Brunicardi 1914, 196; McGill 1947, 29) Graves or cists with extended corpses have also been reported in this area (Knowles 1901, 343-45; McNulty 1896, 382-3). Scatters of debris comprising of bones, slag, and fire-cracked stones were observed during the course of the survey.

Date of upload to archaeology.ie: 22 September 2008

DG065-011002-

Class: Mound

Townland: CASHELGOLAN

Scheduled for inclusion in the next revision of the RMP: Yes

Description: Kilmacanny Graveyard (DG065-011001-) consists of a subcircular mound (DG065-011002-) 17m in diameter and up to 2m in height. The mound undulates unevenly and its edge is difficult to determine in some places. There are a number of featureless grave-markers on the mound. One slab (DG065-011003-) on the W side of the mound has a small oval perforation (6.5cms x 4cms). In a ditch along a field boundary to the SE of the mound is a small cross-slab (DG065-011004-) 1.6m x 0.3m at the arms. On one face is a simple cross in relief at the centre of a broad cross-shaped groove. The site is located in a low-lying field with a wooded area to the S and W. To the E is pasture land and to the N the sea.

Date of upload to archaeology.ie: 22 September 2008

DG065-014002-

Class: Ecclesiastical enclosure

Townland: KILKENNY

Scheduled for inclusion in the next revision of the RMP: Yes

Description: A Chapel of Ease (DG065-014001-) to Inishkeel. Pococke (1752, 67) described it as 'an old church called Kilkenny'. Built of rubble, the surviving fragmentary ruins of this church, 9.6m by 4.6m

Internally, are undateable. The E and W gables are represented by grass-covered footings and only the central sections of the N and S walls 2.2m high remain; at the W end of the latter is the splayed ingoing of a window. The church stands in the middle of a rectangular modern graveyard (DG065-014003-). To the N and W of this graveyard is the outline of a curving enclosure (DG065-014002-). Most of a semicircle can be seen. No sign of the enclosure could be found to the E and S but the modern graveyard and church would have stood roughly at the centre of such a circle had this been originally complete. The enclosure is formed by a grassed-over wall c. 0.25m high and up to 1.4m wide. Sections of the wall-footing are visible. In places, the wall was built along the edge of a slope to the sea. There is a 3.5m gap in the wall to the W where the S side is definitely inturned for 7.3m. The site is located on fair pasture land on the S side of the Gweebarra river inlet.

DG073-053---

Class: Standing stone

Townland: MAGHERAMORE

Scheduled for inclusion in the next revision of the RMP: Yes

Description: On Ballinreavy strand, a rectangular standing stone of pinkish granite. This first came to notice in January 2012 when it became exposed at the edge of the dunes. The stone measures 1.75m high above ground level, 0.55m wide at the base of N broad side and 0.28m on the S narrow side: it tapers to c. 0.5m X 0.2m towards the top. A horizontal crack on the seaward S side is not reflected on the other broad N side facing into dunes. There are a series of stones around the base some of which are very loose: these are of local schist. The stone was inspected again in May 2013; it had fallen over and split in two along the crack noted in the above report (pers. comm. P. Harvey).

Compiled by: Paul Walsh

Date of upload: 16 May 201

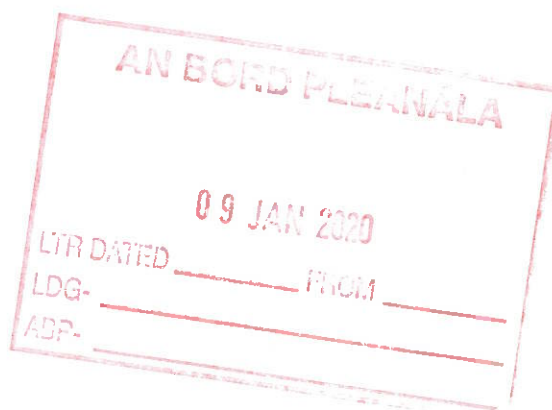
DG064-008----

Class: Standing stone

Townland: CLOONEY (Maas ED)

Scheduled for inclusion in the next revision of the RMP: Yes

Description: Marked 'Magheranakilla Standing Stone' on the 2nd and 3rd editions of the OS 6-inch map. It was located at the SW end of Tramore strand. No trace of this could be found, possibly as a result of shifting sand.



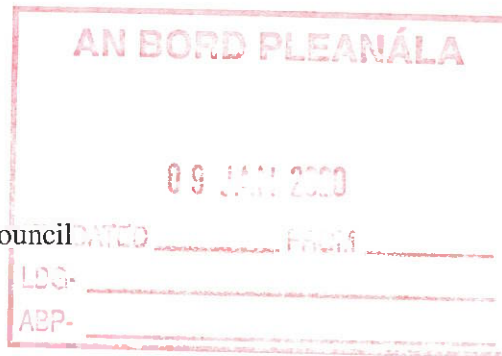
APPENDIX B

Sample of correspondence filed with Donegal County Council confirming acknowledgement by the public of the rich ecological interest in these grounds.

100 Malone Road
Belfast
N Ireland
BT9 5HP
Tel: 048 9096 3306
Email: a.evans@qub.ac.uk

7th August 2019

Mr Seamus Neely
Chief Executive
Donegal County Council
County House
The Diamond
Lifford
County Donegal
F93 Y622



Re: Trespass and Obstruction of Public Rights of Way at Castlegoland, Clooney, Portnoo, County Donegal.

Dear Mr Neely

We wish to register a complaint that an attempt is being made by the current owners of Narin and Portnoo Links to expunge a right of way across the Links to Castlegoland Beach, Clooney. This has seriously infringed our access to the Beach, both on foot and by car, to what is one of the most outstanding coastal gems of west Donegal. This is an access which one of us (KE) has enjoyed for 55 years, and, both of us, for 45 years. When we did *Locum Tenens* for Dr Malachy McCloskey in Glenties in the 1970s, he, a sometime Captain of the Golf Club, assured us that this right of way, stretching back many generations, was inviolate. On top of this the present Links owners have erected an electric fence along part of the Beach foreshore which looks as though it would be more at home gracing the perimeter of an internment camp.

Castlegoland Beach is outstanding in many ways: a curved bay, facing north, well over a mile long with rocky outcrops at each end, offering rock pools, rich in sea urchins and other crustaceans; there is even a large glacial erratic on the rocks at the western end. This is all backed by dunes which are predominately formed by the ground up remains of shell fish, in contrast to Ireland's east coast. The setting is stunning, looking east across at the Great Dune at Dooley, with Shot Hill, Crohy Head, and then Arranmore Island to the north, with Slieve Snacht and the majestic Errigal looming beyond, and precious little signs of human development in between.

There is much to enjoy on the Beach including the birdlife: skylarks (little wonder that their collective noun, exaltation, means 'extreme happiness'), Dunlin, Terns, Gulls, a Cormorant colony on Hog Island off the eastern rocks, Sand Martins nesting in the face of eroded dunes nearby, and Oystercatchers, but the Ringed Plover deserve special mention. These gorgeous little birds, with their distinctive dark collars, are beach-nesting with their chicks depending on running for their survival, with an ability to freeze in their tracks, lie doggo in a wisp of seaweed, and thanks to perfect camouflage, virtually disappear. Meanwhile the parents will be attempting to draw you, with wing dragging, away from their offspring. The joyful sight and haunting cries of flocks of Ringed Plovers, flying in tight formation along the strand, is one of the joys of Castlegoland Beach.

The Beach is a rich source of shells such as Wendle Traps, Sea Dollars, and two varieties of Cowrie shells: the European, with its three distinctive brownish-purple spots, and the slightly smaller, unspotted, Arctic. They feed on sea squirts under the rocks at extreme low water, and when they die, their buoyant shells are left in discrete lines along the Beach by the ebbing tide. It is because Castlegoland is so sheltered from the westerly winds that so many Cowries remain intact. Their fragility is possibly attested to by the fact that the word 'porcelain' is derived from the Italian for 'Cowrie.'

Plants particularly worth mentioning are Marram Grass which anchors the entire dunes system, "pignuts instead of daisies", which Robert Lloyd Praeger described in his classic, 'The Way That I Went', Meadowsweet, Purple Loosestrife, Orchids, the ubiquitous Sea Pinks and the edible, Fat Hen, which flourishes along the top of the Beach where occasional glimpses of the Irish Hare can be had. At the other extreme of the Beach an occasional Grey Seal can be seen spotted a little out to sea, and, exceptionally, a pod of Dolphins much further out.

Years ago, we encountered a Golf Club groundsman who told us that the track to the Beach was a recognised right of way, and not to listen to anyone who stated otherwise, adding that, "The golfers can be very awkward!" We have never found them to be awkward, but the golf club's current owners have not proved as amicable. There is an observation, usually attributed to Mark Twain, that "Golf is a good walk spoiled." In the present case, thanks to the actions of its owners, the Golf Club has spoiled a good walk for everyone else.

We have a place near Castlegoland and the Beach is inevitably our first choice for a walk in any weather, so we feel that our amenity has been seriously curtailed. Part of the loss in amenity relates to the mounting evidence of the beneficial effects which nature bestows on health and well-being. In support of this we enclose recent photos showing the best of Castlegoland in summer (looking east on a glorious day: July 2017) and autumn (looking west with *Laminaria* cast up by a northerly storm: November 2018).

There are rumours that the plans for the Golf Course include the construction of a helipad. If so, a helipad situated so close to bird breeding areas is totally unacceptable as it would represent an assault on the area's biological diversity, on top of the harm already inflicted on the flora of the dunes by the liberal use of herbicides on the Golf Course and the carving of new tracks for golf buggies.

We also learn that a golf course designer, who has worked for Donald Trump, may be involved in remodelling Narin and Portnoo links. This is far from reassuring, given that Scottish National Heritage has recently recommended that the dunes at the Trump golf course in Aberdeenshire should be stripped of their designation as a 'Site of Special Scientific Interest' because they have already been, "partially destroyed."

Some of the Golf Club land enclosed by the electric fence represents 'accretion' which was not mapped on the original folio. This, properly, belongs to the people, or at least, to Donegal County Council, and ultimately, to the State. Donegal County Council must act responsibly by ensuring that the right of the people to enjoy the invaluable amenity of Castlegoland Beach is supported.

We trust that this matter will be brought to the attention of Councillors most urgently and discussed at a full Council Meeting. What is going on is not only an attempt to expunge rights of way but also to banish local people from a beach that has been an asset for generations. We urge Donegal County Council to uphold the rights of the many local people, rather than to pursue the financial interests of the distant few.

Yours sincerely

Professor Alun Evans

Mrs Kathleen Evans

09 JAN 2020

RECEIVED

FILED

APPENDIX C

Sample letters proving habitual public user of the public rights of way obstructed by the works.

Name(s): Brian Ash

Address: Clooney Lodge, Castlegoland, F94K7R0

Telephone: 0044 7774758598

E-mail: brian.ash@39essex.com

Date: August 12th 2019.

Proof of use of public rights of way at Castlegoland, Clooney, Portnoo, County Donegal.

Please circle which right of way this relates to from the following list:

1. Vehicle and pedestrian access to Cashelgolan beach *
2. Pedestrian access to Sweeney's bank (the main Narin Strand) *
3. Pedestrian access from the main Narin Strand to Cashelgolan beach *

Complete description of usage:

- Include as many details as possible including dates, type of usage, others who may have used it et cetera.
- indicate also if you have any proofs of usage - ideally Photographs but if not any other evidence you can think of.

My family and I have used the now obstructed ways across the golf course for approaching 50 years. We have walked from the gate adjoining what was and may still be the fifth tee across the dunes to the beach known as Sweeney's Bank, initially regularly but for the past 30 years or so on a nearly daily basis, during the months of March/April and July and August and, in some years, during the Christmas and New Year holiday period.

We have also regularly walked and driven along the road leading to Castlegoland beach enjoying uninterrupted access to the beach and very often continuing along the path at the edge of the golf course at Carrickfad and on to Naran strand. We have usually been accompanied by one of the 4 dogs that we have owned over the 50 year period.

For about 30 years, we have owned the house called Clooney Lodge, which is located a short distance from the southern end of the spur road which leads to the golf course gate. On most mornings and regularly at other times of the day throughout the 30 years, my wife has walked across the golf course to swim at Sweeney's Bank or to walk on the strand, sometimes accompanied by myself and/or one or other of our children and, more recently, their families.

We have often travelled all of the ways with relatives and friends and their families. We know of many people who have used them and have frequently encountered others using them at the same time as ourselves.

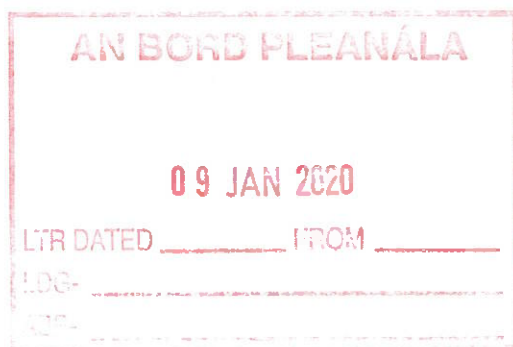
We know that the use extends well beyond the 50 years of our own usage. My wife's aunt and uncle, who owned a house in Portnoo, drove or walked along the roadway to swim at Castlegoland beach a minimum of several times a week during the summer months between the 1950s and about the year 2000, as did many of their contemporaries.

My sons and I have played golf on the course for around 40 years. I was a country member for about 20 years. We often played through or alongside people using the ways. Although it is not relevant to the existence of a PROW, in our experience, golfers and walkers have always co-existed happily by offering and accepting precedence, when necessary.

So far as we are aware, at no time until recently has the access gate been locked, nor has there been any material obstruction of the ways. There has been no other manifestation of an intention by the landowner to restrict or prevent use of the ways by the public.

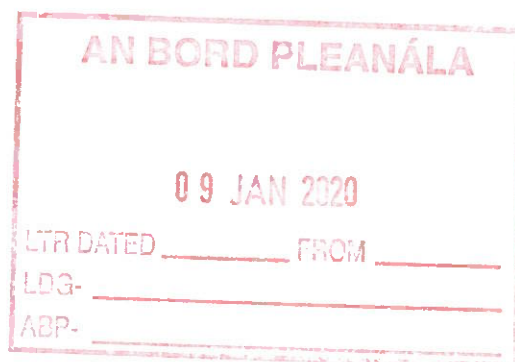
I attach a selection of Photographs demonstrating the frequency and long duration of our use of the ways. Many more are available.

Brian Ash



Portnoo
Co. Donegal
8th July 2019

Mr Seamus Neely, Chief Executive
Donegal County Council
County House
The Diamond
Lifford
Co. Donegal F93 Y622



Reference: Trespass and Obstruction of Public Rights of Way at Cashelgolan, Portnoo, Co. Donegal

While sending you a signed copy of a general letter, I am taking this opportunity of sending you this personal note in support of the wide-ranging concerns raised by the general correspondence.

Background

In 1947, when resident in Convooy, Co. Donegal, my Mother bought a house at Ballyerin, Lackagh, Portnoo. In 1982 I bought a cottage in Clooney, Portnoo. I now reside in Loughfad, Portnoo.

Thus, I have a long association with Cashelgolan and knowledge of the development of the golf links/course and the recent developments that have taken place. It is with this particular background and knowledge that I write to you.

Access to Cashelgolan

I would confirm that since 1947 (and certainly well before), locals and visitors have, by continued use, established pedestrian rights of way across the links to Sweeny's Banks, to Cashel Golan strand and around the edge of the links course to connect Narin Strand to Cashelgolan Strand.

At a personal and family level I can confirm that, over the years, I have made considerable use of the established means of access across the golf links. To lose this would not only be a personal loss but one to the entire local and visitor communities.

Rights of way for vehicular access to Cashelgolan Strand have similarly been established – see below.

Traditional Collection of Sea Rods (Wrack)

In the 1950s I recall local people collecting sea-rods – the stems of kelp seaweed (*laminaria* spp.) These were dried on low lying walls and sold for manufacturing. The remains of these low lying walls remained until recently. The collection of seaweed by farmers and gardeners continues to this day.

On purchasing my house at Clooney in 1982 I was told that, as the owner of the property, I had a right to collect wrack from Cashelgoland.

The collection of sea rods, by necessity, established access for carts and vehicles. This right of access must be maintained.

Acquisition of Lands

It is of concern to me that the current owners of the golf links have fenced off an area of low-lying land close to the sea shore which does not, evidently, belong to them. [Half of this wild area, largely covered in marram grass, was recently converted into a driving range. This area should be "wilded" and allowed to return to its former state.] The area should not be fenced with access denied to the general public.

I seek the professional assistance of Donegal County Council in rectifying these matters.

Sincerely

John Northridge

APPENDIX D

Photographs proving the existence and extensive user (see clearly worn tracks) of the Public Pedestrian Right of Way through Narin Portnoo Links crossing directly through the point A as marked on map SK-01.



Photograph 1 – 29th May 2019 –Sweeney’s banks to Narin Beach



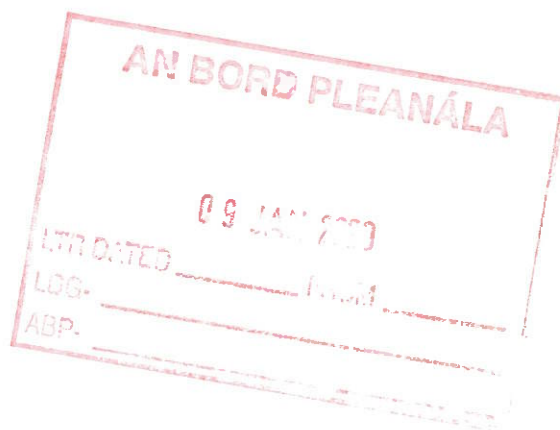
Photograph 2 – 29th May 2019 –Narin beach to Sweeney’s Banks



Photograph 3 – 29th May 2019 – from Narin Beach passing through Sweeney's Banks



Photograph 4 – 29th May 2019 – from Sweeney's Banks towards gate



Photograph 5 – 27th July 2019 – Part of Public Protest Walk against the Blocking of the Rights of Way through Sweeney's Banks.



Photograph 6 – 29th May 2019 – from Sweeney's Banks towards gate, with recent excavation works obstructing the right of way.



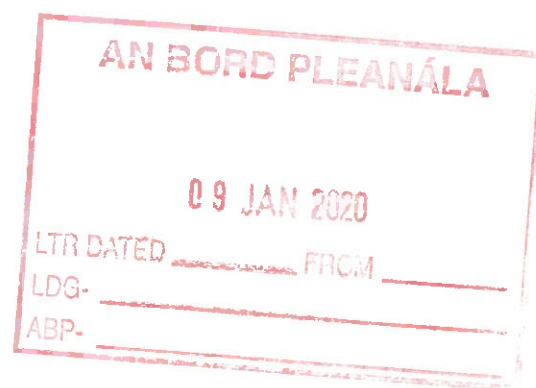
Photograph 7 – 29th May 2019 – Close up of recent excavation works obstructing of right of way.



Photograph 8 – 7th October 2019 – view from the golf course gate across to pedestrian path obstructed by the works.



Photograph 9 – 7th October 2019 – View from the golf course gate across to pedestrian path which clearly shows works obstructing right-of-way .



APPENDIX E

Photographs proving the existence and extensive user (see clearly worn tracks) of the Public Pedestrian and Vehicular Rights of Way through Narin Portnoo Links and public grounds crossing directly through the point B as marked on map SK-01.

No other vehicular access is available to Castlegoland beach.



Photograph 10 – 29th May 2019 – vehicular public right of way to foreshore area.



Photograph 11 – 29th May 2019 – vehicular public right of way to foreshore area branching off from the road to the shed.

AN BORD PLEANÁLA

09 JAN 2020

LTR DATED _____ FROM _____

LDO- _____

VER- _____



Photograph 12 – 29th May 2019 – vehicular public right of way at foreshore, with the remains of the old single strand fence (with gates) in the centre and the works (no gates) to the right.



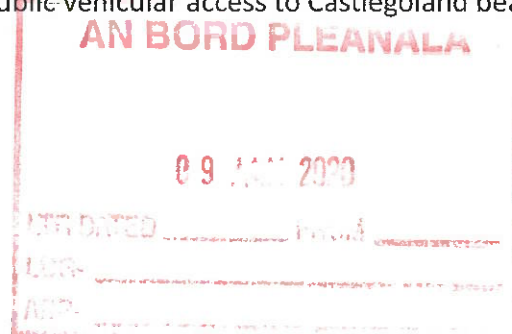
Photograph 13 - Aug 2011 – Castlegoland beach – Car parked in background on foreshore area



Photograph 14 - July 2017 – Castlegoland beach – Cars in background on foreshore.

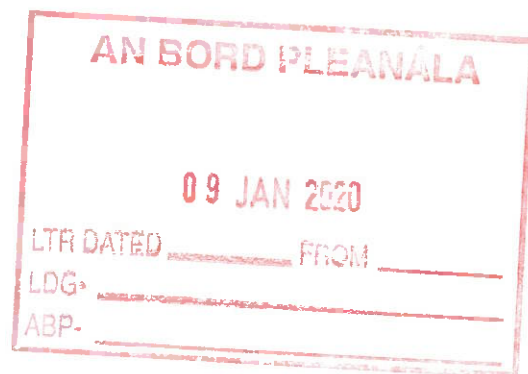


Photograph 15 – 29th May 2019 – End of the public vehicular access to Castlegoland beach, which is clearly visible due to usage.





Photograph 16 – 29th May 2019 – Section of the foreshore, showing result of excavation and removal of vegetation in the months before May 2019.



APPENDIX F

Table from Drawing SK-01 which provides a broad overview of the position vis-à-vis planning and the works - refer to Drawing SK-01 for location of references A and B.

APPLICANTS UNDERSTANDING OF THE STATUS OF EXCAVATIONS.										
Location	IN AREA OF ESPECIALLY HIGH SCENIC AMENITY	IN AREA OF HIGH SCENIC AMENITY	IN SPECIAL AREA OF CONSERVATION	ADJACENT TO SPECIAL AREA OF CONSERVATION	ON PUBLIC LAND	LAND HABITUALLY USED BY THE PUBLIC FOR RECREATION, MEANS OF ACCESS TO SEASHORE	BLOCKING LISTED PUBLIC RIGHT OF WAY (MAY BE WITHIN JURISDICTION)	OTHER PROPOSED NATURAL HERITAGE AREA	ADJACENT TO PROPOSED NATURAL HERITAGE AREA	IN BLUE FLAG AREA
Point A		✓		✓		✓			✓	??
Point B	✓		??	✓	✓	✓	✓	✓		✓

NOTE 1: CLARIFICATION REQUIRED ON EXTENT OF S.A.C. - EXCAVATION IS EITHER WITHIN S.A.C. OR ADJACENT TO S.A.C.

NOTE 2: EXACT LOCATION OF POINT A TO BE DETERMINED

AN BORD PLEANÁLA

09 JAN 2020

LTR DATED

LDG-

ABP-



Donegal County Council
Cash Office
Three Rivers Centre
Lifford
Co. Donegal
074 9153900
10/10/2019 10:14:39

Receipt No. : LA01/0/78194

TONY KITTERICK
LOUGHFAD
PORTNOO
DONEGAL PO
CO DONEGAL
REF - SECTION 5

PLANNING FEE - PART V/SECT 5 8
GOODS 80.00
VAT Exempt/Non-vatable

Total : 80.00 EUR
 63.01 IEP

Tendered :
Cash 100.00

Change : 20.00

Issued By : Rosemary Coyle
From : Cash Office
Vat reg No. IE8F28103W