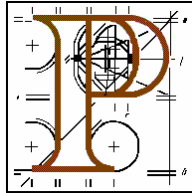


An Bord Pleanála



Inspector's Report

PL04.242301

DEVELOPMENT:- Construct fish farm comprising 20 no. shallow tanks of 7m diameter each in an area of 0.5 hectares, river water lift station at River Araglin, raised feed channel, inlet and outlet screenings, fencing and netting and access at Macronev Lower, Kilworth, Co. Cork

PLANNING APPLICATION

Planning Authority: Cork County Council

Planning Authority Reg. No.: 12/06427

Applicant: Michael Walsh

Application Type: Permission

Planning Authority Decision: Grant Permission

APPEAL

Appellant: James and Ann Ryan

Type of Appeal: Third v Grant

Observers: None

DATE OF SITE INSPECTION: 10th October 2013

INSPECTOR: Mairead Kenny

SITE LOCATION AND DESCRIPTION

The site is at Macroneey Lower to the southeast of Kilworth village near Fermoy in county Cork. It has frontage onto a minor road at the northern site boundary. At the opposite side of the road are three houses including the applicant's place of residence. To the north-west, about 350 metres by road, is an existing fish farm, which is in the ownership of the applicant also. That fish farm takes water from the Douglas River which traverses the western boundary of the subject site. The southern boundary of the site is defined by the Araglin River. Both the Douglas and the Araglin Rivers are tributaries of the Blackwater River candidate Special Area of Conservation Site Code 002170. The rivers are part also of the proposed Natural Heritage Area 1029.

The site is of stated area of 7 hectares. At its southern end and along the west are wet grassland habitats. The eastern site boundary is defined by a mature hedgerow. In general the land slopes away from the hedgerow and away from the roadside in the direction of the two streams. The main body of the site is under mature grassland. Aerial photographic records available on file indicate the extent to which agricultural practice is restricted due to poor ground conditions at the west and south of the site. Remnants of a former mill apparently remain on the site according to relevant records. However at the time of my inspection there was no clear evidence of the former mill, although there was uneven ground. To the west of the site at the opposite side of the Douglas River is a one-off dwellinghouse, which I assumed to be the place of residence of the appellant whose address is Mill House.

An enclosed map identifies the location of a recorded monument CO-028-019 on site and to the south-west of the site.

Photographs taken by me at the time of inspection are attached.

DESCRIPTION OF PROPOSAL

The proposal is to construct a fish farm by the conversion and development of a 0.5 hectare plot of farm land. The process involved is the same as already carried out by the applicant at the existing fish farm and the two will operate in conjunction with each other to increase overall output of fish. At the existing fish farm the initial smolt stage of fish growing will continue and the proposed fish farm will be used to increase capacity. The fish will continue to be transported to Connemara for final growth and finishing. The development will be managed by the owner and an assistant, similar to the existing fish farm.

The application was accompanied by an *Ecological Screening Report* prepared by Dr Mary O'Connor and dated October 2012. This is based on a development of 20

no. 32 m³ fish tanks. It elaborates on the operation of the fish farm. The existing operation is licensed for some 20 years. Continuous water supply runs through the site and is returned continuously to the river. Tanks are populated by live salmon at different stages of growth up to fingerlings (10cm in length). As the season (February to October) progresses the number of tanks in use increases. Water flow through is about 60 gallons / minute per tank. Oxygen will be occasionally supplied from oxygen cylinders.

The site is within the cSAC River Blackwater Site Code 002170. The site supports a variety of habitats but only one is annexed under the Habitats Directive namely Floating river vegetation, a qualifying interest for the site. The species for which the river system is protected are Killarney fern, Otter and fish and invertebrates including Freshwater pearl mussel, White-clawed crayfish, Lamprey (3 species) Allis shad, Twaite shad and Salmon. Freshwater pearl mussel are upstream of the site except for some isolated mature adults downstream. Water quality is Q4 which indicates some impairment as a consequence of eutrophication but these conditions are acceptable for salmonoids, Lamprey species, Otters and Floating river vegetation. Details are provided of monitoring results from the existing fish farm. Details are provided of measures to mitigate against reduction in water quality, pathogen control, escape of cultured salmon, spread of alien species and construction phase disturbance.

The overall residence time of the fish will be 6 to 8 months. 15 tonnes per annum of feed will be used – this is crumbed feed and mini-pellets. The ingredients of the fish feed and its constituents are shown on an attachment. 1 tonne salt will be added per annum for conditioning and 400kg of formalin will be used. Typically 40kg of mortalities will arise per annum which will be recycled as category II waste. Other waste will also be recycled. For 126 hours maximum low level lighting will be used. Young fish are protected from bird by use of overhead netting. Floors are stated to be of reinforced concrete and walls and partitions of post tension block.

In terms of the critical ecological concerns in the appeal the content of the *Ecological Screening Report* is largely superseded by a *Natura Impact Statement* which was lodged to the Planning Authority on 26th April 2013. This is discussed in the Assessment section of this report. In relation to the nature of the proposed development the only supplementary information provided relates to the nature of the water abstraction. In essence, it is noted, the water abstraction point and the return point are from a single point in the river being separated by only 6m. Thus it is not anticipated that the flow in the main channel will be lessened as there will be continuous return flow. The rate and volume of abstraction and return will be 50m³/hr in summer to 300m³/hr in the first quarter of the year. The volume of the river in periods of low flow is 1616m³/hr (95%ile).

PLANNING HISTORY

There is no relevant planning history related to the current site. The existing fish farm was permitted under planning ref. 80/811 in 1980. The officials of the Planning Authority indicate that some of the existing facility may be unauthorised and I address this matter later in this report.

PLANNING POLICY CONTEXT

National Development Plan 2009-2015

The policies outlined in the NDP support diversification of marine activities including aquaculture in order to provide employment for communities dependent on fishing.

Cork County Development Plan 2009

Section 5.5.24 of the county development plan refers to supporting and promoting the sustainable development of aquaculture. The policy is presented in terms of the coastal environment and the economic well-being of the County.

Policy ENV 1-3 sets out the objective to work with all stakeholders to conserve, manage and where possible enhance the County's natural heritage including all habitats, wild species, landscapes and geological heritage.

There are 123 proposed Natural Heritage Areas in the county, including the Araglin River site code 1029.

Policies ENV 3-1, ENV 3-2 and ENV 3-3 refer to protection of features and sites of architectural interest.

SELECTED INTERNAL AND OTHER REPORTS SUBMITTED TO PLANNING AUTHORITY

The report of the **Senior Executive Planner dated 29th January 2013** notes the site context and the nature of the development as well as the internal and other reports presented and recommends that further information be requested.

The report of the **Senior Executive Planner dated 4th July 2013** notes that in relation to a requirement for EIA the development does not constitute an extension to the existing and is not subject to Schedule 5 Part 2, 13(a) nor is it a facility in relation to which there is a mandatory requirement for EIA based on Schedule 5 Part

2(f) not being upstream of a drinking water intake or in excess of 1 million smolts. In relation to whether a sub-threshold EIA is required the key issues which would be addressed in an EIA would relate to water quality and flood risk and these are covered by the submitted Flood Risk Assessment and the Appropriate Assessment. Cumulative impacts have also been considered in relation to EIA. Some element of the existing facility may be unauthorised but a refusal of permission under the current proposal is not warranted. Permission is recommended.

The Council's **Archaeologist** notes that the site contains the recorded monument CO028-019 Mill. This is understood to have been a flax mill and part of the structure remains. The I-shaped field to the west adjacent the river was used as a retting field and it is here that the development will take place. A buffer zone is recommended in order to protect the remains of the mill. The retting field is of historical interest as it was the area where flax was soaked, essentially a pond. There is no objection to the development in this regard.

The **Environment Report dated 21st December 2012** notes that the principle environmental impact concerns the secure storage of 'Dangerous Substances' with adequate bunding to prevent direct or indirect discharge to waters on the site. Any possible emissions will be addressed by the required Licence. It is noted that the development description describes two shallow tanks rather than twenty. Conditions are recommended. The subsequent report **dated 21st June 2013** concurs with the findings of the NIS. Fish farms require unpolluted water and therefore the development will act as a continuous water quality monitoring station for the Araglin upstream. Because of the fast through-flow of water any fish metabolites will be diluted and assimilated to levels acceptable for salmonid waters and liquid discharges will be controlled by licence. Measures to control construction phase impacts are set out.

The **Area Engineer's report dated 28th December 2012** states that the 70m sightlines are not acceptable and that a 90m sightline is required. A revised drainage arrangement at the site entrance is required as surface water ponding takes place. As a public water supply is not available the quality and location of private sources needs to be established. Details to deal with domestic effluent arising from the existing and proposed fish farms is required. In a subsequent **report dated 13th May 2013** it is stated that while there is no objection in principle to the proposed fish farm the enlargement of the existing fish farm on a nearby but unrelated site would lead to negative impacts on the SAC and that fish farm is not governed by any planning application. Permission is not therefore recommended. The entrance detail is not in keeping with requirements. Any work site should have sanitary facilities and a temporary toilet with monthly maintenance contract is recommended.

The **Heritage Unit report dated 21st January 2013** states that there is potential for the proposal to give rise to impacts on the SAC by reason of construction impacts

and operational impacts. The contents of the Ecological screening report are noted and summarised in a table. In a number of respects this information is inadequate and reviewed. A flood risk assessment is required in addition. The Planning Authority is not in a position to screen out the potential for significant impacts on the SAC and having regard to the nature of the development and its location within a flood risk zone and in the SAC the development should be subject to Appropriate Assessment. The NIS should be prepared by suitably qualified ecologist(s) whose experience and qualifications should be cited in the reports. Particular issues to be identified are noted.

The **Ecologist's report dated 3rd July 2013** notes the submission by the applicant of a NIS. The report presented in stated to be the record of the Appropriate Assessment in respect of the application. Species of habitats which are potentially vulnerable to impact arising from the development are Water courses of plain to montane levels with the *Ranunculion fluivantis* and *Callitricho-Batrachion* Vegetation, Brook lamprey, River Lamprey, Salmon, Freshwater pearl mussel, Sea lamprey, Otter. The conservation status of these habitats or species in the Blackwater River SAC ranges from Good to Excellent. The Douglas and Araglin rivers are of good water quality status but also at risk of achieving the water quality objectives which have been set for them. Potential threats and required mitigation to features are listed. Mitigation measures are set out in the NIS to manage the risks identified. These measures relate to the protection of water quality in the construction phase, and in the operational phases, measures to prevent accidental release of farmed fish, measures to prevent contamination with medicines or chemicals. The mitigation measures have been determined to be sufficient to protect water quality and in addition conditions are recommended by the Environment Department. The site is within the flood risk zone and the FRA submitted has been assessed and there is no risk that the development would increase the risk of flooding in other areas. The potential for the development to give rise to or contribute to adverse impacts on the SAC can be ruled out. Permission should be granted.

An Taisce in a report dated 19th December 2012 indicates a number of concerns. The site is directly beside a floodplain and nutrients can be released during construction operations. The site is upstream of a Freshwater pearl mussel population, a species which is especially sensitive to changes in water quality and chemistry and other species such as lamprey and salmon could also be affected by changes in water quality and sediment input. Continuous surface water monitoring should be undertaken to ensure mitigation measures are working effectively and to allow for a response plan to be developed to stop any water quality events. A strategy for the worst case scenario should be set out. Bat survey is required and appropriate mitigation put in place. Breeding bird disturbance needs to be avoided and invasive species controlled. These **concerns are reiterated in a subsequent report dated 7th May 2013.**

The report of the **Department of Arts, Heritage and the Gaeltacht dated 31st December 2012** notes that the development may directly impact on two recorded monuments which are subject to statutory protection and that it may also impact on the mill races and the associated subsurface archaeological features. Further information is required in relation to Archaeological Assessment including Underwater Archaeological Impact Assessment. The Underwater Archaeological Assessment shall include an analysis of any impacts into watercourses or structures associated with such watercourses including the Douglas and Araglin Rivers, weirs, sluices, races etc., A subsequent report dated **13th May 2013** notes that this matter was not raised in the request for further information issued. DAHG thus recommends that any observations of the Cork County Archaeologist be required by condition. In relation to nature conservation in a report dated **8th May 2013 DAHG** states no objection provided the mitigation measures outlined in the NIS are strictly adhered to and a condition of planning should be that prior notice of the use of any pesticides for disease control must be notified to the Local Authority and this Department.

The report of **Inland Fisheries Ireland dated 8th January 2013** identifies matters to be considered in the assessment of the application to which the authority is not opposed in principle. These matters are the discharge of polluting material during the construction phase and the potential escapement of cultured fish stock into the receiving aquatic environment and the provision of adequate screening at intake and discharge points.

DECISION OF PLANNING AUTHORITY

The Planning Authority decided to grant permission subject to conditions including :

- 20m buffer zone to be delimited around the mill
- Treatment of invasive plant species
- Construction phase measures including silt traps and berms, supervision of works by on-site clerk of works, installation of temporary line of fencing and parking
- Requirements relating to vermin, noise, waste
- All over ground tanks and drums containing liquids other than clean water to be contained in a sealed impermeable bunded area
- A standby water lift pump to be installed with suitable alarm system to indicate low water flow level through the fish farm
- Retention of natural bankside riparian woodland and bankside vegetation

- All discharges shall meet water quality standards sufficient to ensure that the discharge will not interfere with the achievement of ecological water quality objectives under the Freshwater Pearl Mussel Regulations
- Sight distances of 90m to be achieved at entrance.

GROUND OF APPEAL

The grounds of the third party appeal by the occupants of Mill House are:

- Increase in development to twenty tanks while all assessments were undertaken based on two tanks
- The large-scale commercial fish farm is 100m from our house which is below the 300m separation required and will devalue our dwellinghouse
- The open drains will be the discharge for the proposed 16 tonnes of feed and concerns include odour, flies and noise and use of chemicals
- Management, storage and spread of the discharge is of concern as are procedures for removal of dead fish and storage to limit vermin
- Measurement of flow and volume in the Araglin took place when levels were much greater than at present
- The effect of the discharge into the river is thus greatly increased
- What is the reason for the water pipe from the existing fish farm
- It is queried whether the existing development is contaminating the Douglas
- The Blackwater may be affected with consequences for angling
- The river is an amenity and is used for paddling and swimming and walking
- The discharge pipe will discharge into McCormack's Pool
- The use of salt and formalin are noted but the report of Dr O'Connor does not state the volume, frequency or dilution rate and formalin is carcinogenic
- Dr O'Connor's report fails to mention a number of species which are all on the Araglin and which are on the EU habitat list namely Bats, Little Egret, Kingfisher, Dipper, Grey Heron, Grey Wagtail and Peregrine
- The true test of the development will be the survival of the Dipper

- The development does not create long-term employment.

RESPONSES TO APPEAL

Planning Authority

The site has been fully assessed by environment, heritage and engineering sections of the Planning Authority and is deemed to be within acceptable parameters and can be satisfactorily managed. The proposal is acceptable in principle and is therefore considered acceptable.

First party

The submissions on behalf of the first party notes that the 'amenity area' referenced in the appeal is in private ownership and that notices erected at the roadside and the river bank indicate this fact as the enclosed photos show.

The first party response also encloses a separate report prepared by Dr Mary O'Conner. This notes the purpose of a NIS and lists the habitats and species which are qualifying interests for the SAC and which were duly considered in the NIS. The appellant refers to species which are not considered by the appropriate authorities to be species of qualifying interest for the site and were not therefore considered in the NIS but were assessed in general in an additional environmental report. Use of all chemicals on site will be subject to the stringent conditions of discharge licence.

ASSESSMENT

The main issues arising in this application and appeal are addressed under the following headings :

- Status of the existing fish farm
- Whether an EIS is warranted
- Flood risk
- Archaeological impact
- Whether the development is acceptable in terms of impacts on the environment in general and residential amenity
- Appropriate Assessment

- Other matters.

Status of existing fish farm

Queries regarding the planning status of the existing fish farm arose during consideration of the application by the Planning Authority. I propose to re-consider the matter.

I refer the Board to the report of the Senior Executive Planner dated 4th July 2013 which notes the permitted development and the date and purpose of drawing W-66-3¹. I concur with the reasoning of the Council's official that there is evidence to support some concern in relation to the status of the existing fish farm.

By the time the Planning Authority was alerted to a possible unauthorised development at this site a request for further information had already been issued and the Planning Authority could not re-open the matter with the applicant. The Board is not constrained in the same way at this time. The Board may wish to consider whether a refusal of permission is appropriate for reason that the development comprises an extension to a facility which may be unauthorised, as recommended by an official of the Planning Authority.

I do not consider that the status of the existing facility warrants further consideration in relation to this appeal. As the report of the Senior Executive Planner also notes the developments are separate developments. The two fish farms would be separately accessed, would not be visible from each other and would not share a water source. For these reasons I support the conclusion of the Planning Authority that the issue is not central to the assessment of the current proposal or warrant a refusal of permission.

I conclude that notwithstanding the possibility of unauthorised development (which is beyond the enforcement period) this appeal should be processed without further consideration of this matter.

Environmental Impact Statement

The Planning Authority under a request for additional information queried whether an EIA was required in this instance noting that the information presented in this regard was insufficient to enable the matter to be determined. Further, the Planning Authority noted that a sub-threshold EIS might be required having regard to the nature and scale and location of the development.

¹ Drawing W-66-3 dated June 1995 is entitled 'Application for permission to retain existing fish farm and permission to construct 2 no. rearing tanks and construct new store'. A second title shows that the drawing is 'For Licence Renewal' and this has a date of 19th August 2011.

The information presented by the first party is that the facility is not upstream of a water intake, the number of fish per annum is 200,000 smolts and the low flow rate for the river is 0.45m³/hr. The Planning Authority accepted all of this data. The trigger for EIA includes the breeding of over 1 million smolts per annum and is also related to the dilution water. Due to the scale of the facility at less than 1 million smolts and the location relative to drinking water intakes I agree with the conclusion that a mandatory EIS is not required under Schedule 5 Part 2(f) PDR2001 as amended. I have already commented on the separate nature of the current proposal, which is not an extension to the existing fish farm and therefore Schedule 5 Part 2, 13(a) is not applicable.

In relation to whether there is a requirement for a sub-threshold EIA having regard to the nature and scale of the development, the nature of the location and the potential impacts, I do not consider that there is a likelihood of significant effects. I agree with the conclusion of the Planning Authority that there is no requirement for the application to be accompanied by an EIS.

Flood Risk

The proposed fish farm would be close to a river which is a European site. The potential consequences arising from a significant flood event during the construction or operational phase could potentially impact the species and habitats which are qualifying interests of the SAC and could affect material assets. It is necessary therefore that the Board is satisfied prior to a grant of permission that flood risks are fully explored and deemed to be acceptable.

The application is accompanied by a Flood Risk Assessment report which was submitted on 26th April 2013 in response to a request for additional information. In relation to documentary evidence the FRA notes the Draft Southwest CFRAM Study which shows that the site is not within the 100 year indicative fluvial event or the extreme fluvial event. In addition there are no known flood events specific to the site based on the National Flood Hazard Mapping.

At the time of my inspection I noted vegetation patterns which I considered were indicative of seasonal flooding. The FRA refers to the perimeter of soft ground and good ground which can be identified in the aerial photographs provided. The good ground is continually farmed and it is within this area that the fish farm is to be sited according to the applicant. My inspection of the site supports the applicant's statement.

The FRA also is based on a survey of the ground contours on the site which is presented on the 'Site Layout' and the 'Riverbed Adjacent' drawings. This notes that the top tank elevation of 9.9 will ensure against flooding even in the extreme event.

In relation to the storage provided by the flood plain the FRA notes that this will not be decreased as there is no increase in ground levels proposed. The NIS notes that the cut and fill would be balanced, which achieves the same result, i.e. no substantial change in storage. The tanks holding river water would constitute a marginal increase in retention. This is offset by a reduction in storage in the lower flooded area as a result of the channel support mound which marginally reduces storage. Run-off will be unaltered; the site is to be finished with gravel.

In terms of the national guidance the development is described as being in Flood Zone C and the FRA states that the development is water compatible and is therefore appropriate to its location. The fish farm is stated to be located in the optimum location and at the optimum elevation having regard to access, workability and feed and return water requirements.

I consider that the FRA submitted demonstrates that the development is acceptable in terms of flood risk.

Archaeological impact

The site of the proposed development is of archaeological and historic interest. The Council's **Archaeologist** notes that the site contains the recorded monument CO028-019 Mill, understood to have been a flax mill which was recorded by Lewis in 1837. The I-shaped field to the west adjacent the river was used as a retting field - it is here that the development will take place. The retting field is of historical interest as it was the area where flax was soaked. It was essentially a pond. I note that the information presented on the National Monuments Service website indicates that when last surveyed in 1984 there was evidence of the north-east corner of 2-storey gable-ended structure, two wheel-pits and the millrace including the remains of three sluice gates. It is not known if the site was recently inspected by the Council's Archaeologist or by DAHG.

In relation to the retting field where the development will be positioned this is of historical interest. I agree with the recommendation of the Council's Archaeologist that the development of this part of the site is acceptable and in particular I note that the retting field has lost its context due to removal of the extant mill remains.

A buffer zone is recommended in order to protect the remains of the mill. I agree with the County Archaeologist that this matter should be addressed by condition. There is no objection to the development in this regard. However, I also consider that a monitoring condition should be attached as it appears that the excavation required to hold the Archimedean Screw and the water channel embankment may intersect with the former mill race. A monitoring condition would also address the concerns of DAHG in terms of the immediate environment and the potential

underwater archaeological impact, although the latter appears to me to be of limited significance.

The report of DAHG requested a wide range of survey work including in relation to weirs and structures which are not in the vicinity of the development and which will not be impacted. I do not consider that this recommendation is in accordance with the Development Management Guidelines and I do not recommend this option to the Board.

Environmental impacts and residential amenity

The appellant raises issues related to general ecology, i.e. matters which are not appropriate for consideration under Appropriate Assessment. Amongst the concerns are impacts on specific species of birds, Otter and other species. An Taisce in addition called for a breeding bird and bats survey. Based on the nature of the development and the site I do not consider that significant construction phase impacts can be anticipated; protection of the aquatic environment is the critical issue. The operation phase impacts will be limited to very low levels of traffic, noise and lighting and again I am of the opinion that the only potential significant concern relates to water quality impacts. If the Board considers that the development would not adversely impact on sensitive species such as salmon, which are assessed below, then I am also satisfied that the development would protect the species referred to by the appellant. In relation to bats and birds I note the absence of significant hedgerow / tree removal.

Regarding residential amenity I do not consider that significant impacts can reasonably be anticipated. The nearest dwellinghouse is separated from the site by a river and by a distance of about 100m. Other houses are also at the opposite side of rivers. Based on my brief inspection of the applicant's existing facility I have concluded that the impacts of noise is not likely to be significant. The acoustic environment at the fish farm is dominated by sounds of water being circulated and the associated pumps. I would describe the level of noise as low and un-intrusive. I also noted a complete absence of odour from the facility.

The appellant notes various potential impacts which would affect the residential amenities of the area including potential for waste and vermin. Proper waste management will minimise impacts.

Having regard to the location of the proposed facility relative to the nearest house there is no concern relating to visual amenity. The development would not be described as intrinsically visually intrusive and the site is screened by trees. Occasional lighting will increase the visibility of the development but a refusal of permission would not be warranted for that reason. I conclude that the development is acceptable in terms of impacts on the amenity of residences in the area.

I conclude that the development would not give rise to significant impacts on the residential amenities or on the environment or otherwise be out of keeping with the area or detrimental to the area.

Appropriate Assessment

The NIS identifies the following habitats and species which are qualifying interests for the cSAC and which could be impacted arising from the implementation of the project. The potential cause of impacts are also listed. The information is presented below in a summary table.

Qualifying Interest	Cause of impact
Floating river vegetation	Disturbance of riverbed, input of fines
Freshwater pearl mussel	Possible impairment of water quality
Brook lamprey	Possible impairment of water quality, run-off of fines, disturbance river bed
River lamprey	Possible impairment of water quality, run-off of fines, disturbance river bed
Salmon	Possible impairment of water quality, run-off of fines, disturbance river bed
Otter	Habitat disturbance

Floating river vegetation

This habitat is widespread in the Araglin and the Blackwater and in the SAC its conservation status is excellent. The key requirement is good water quality status and potential negative impacts could arise by the introduction of silts or other compounds in the construction phase and nutrients in the operational phases. The NIS notes that there are no instream works as the existing channel will be widened. The NIS also notes that the maintenance of water quality to salmonid standards will protect the habitat in the operational phase.

Freshwater pearl mussel

The objective is to improve the bad conservation status of this species in the SAC. There is suitable habitat in the main channel of the Blackwater 1.5km downstream according to the Council's ecologist while the NIS indicates that the nearest potential habitat is 6km downstream. Restoration of high status water quality is a key

requirement as is protection of a stable hydrological regime. The latter is not a concern due to the nature of the development. Silt and nutrient control are essential.

Sea Lamprey and Brook Lamprey and Salmon

These have similar requirements and are vulnerable to the same potential threats. Juveniles of lamprey are recorded in the Araglin and the Blackwater. Water quality requirements include protection of good water quality status. Mitigation is required to ensure no risk of silt or other contamination in the construction or operation phases and no elevation in levels of nutrients in the operational phases.

Otter

The NIS notes signs of Otter activity at the riverside. The development will not result in loss of connectivity of habitat. There are no breeding holts present in the vicinity of the proposed works and for that reason the Council's ecologist concludes there is no likelihood of significant construction or operational phase disturbance.

Mitigation

Arising from the above it is clear that the protection of the favourable conservation status of species which are qualifying interests for the SAC and which could be impacted by the development is critically dependent on the protection of water quality. In this regard it is pertinent to address the mitigation measures which are set out in the NIS.

Construction phase measures are set out in section 2E.2 of the NIS. These reference in particular the document 'Minimising Impact of Construction Stage : Site Layout and Organisation General Fisheries Guidelines' and identify the location of stockpiles and storage areas. In relation to ground preparation works and associated road construction, channel construction and foundation works which have potential to result in release of sediments and pollutants the project design and implementation follow the guidelines 'Requirements for the Protection of Fisheries Habitat during Construction and Development Works at River Sites'. These measures are detailed further and include measures to mitigate against water quality effects arising from concrete or stockpiles. Run-off will be routed to the watercourse by suitably designed and sited settlement ponds / filter channels and silt traps will be installed during construction at specified locations to serve different purposes. No in-stream works are proposed but there will be disturbance to one bank. Further details in relation to protection of water quality arising from works at the riverside bank are set out.

Operational phase impacts are set out also in the NIS. The access road and the overall site will be finished in free draining material and the tanks will constitute the only impermeable surface. Guidelines for the hatchery will follow the stringent requirements for farming salmonoids and regular water testing and monitoring of the

tanks will be undertaken to prevent spread of pathogens or escape of farmed salmon.

Other comments

I note the NIS addresses a range of other matters including potential cumulative impacts related to barriers, abstraction, forestry and agricultural. The NIS concludes that no cumulative impact is expected as a result of the proposed development. I consider that the NIS provides adequate basis for the conclusions drawn in relation to lack of significant cumulative impacts.

Screening at intake and discharge points is largely a matter for Fisheries Ireland and no particular concerns are raised in the prescribed body's report. During my inspection of the existing fish farm I looked into one of the fish tank and noted one eel-like fish, possibly a lamprey, which I assumed had entered the tank by way of the water intake. On this basis I submit that it cannot be ruled out that there are issues in relation to screening at the existing fish farm intake and that modifications may be required. Notwithstanding that situation, I consider that it is reasonable to conclude that the new facility could operate without being detrimental to fish. Escapement of farmed stock to the wild is a matter of concern to Fisheries Ireland and the relevant report refers to the need for suitable screens. This matter is covered by separate legislative provision and a condition in this regard is not therefore recommended. Such measures would also ensure that water intake is not detrimental to fish including protected species, including by way of their entrapment in the fish farm.

Conclusion

The protection of water quality in the Araglin will ensure the protection of species and habitats which are qualifying interests for the cSAC. Having regard to the mitigation measures set out above and to the nature and scale of the facility and its location I consider that the Board can be satisfied that the development would not result in significant adverse environmental effects and in particular would not adversely affect the integrity of European sites.

Other matters

A number of other matters are raised in appeal. The issues below are most noteworthy.

The appellant refers to an error in the description of the development stating that the it was described originally as comprising two tanks only and that this was the basis for the assessments undertaken. However, I note that there was no change to the description of the development during the course of the application and that the original notices and drawings refer to 20 no. shallow tanks. I am satisfied that the public notices and the assessment undertaken are adequate.

There is an existing water-pipe connecting this site to the lands to the north-west. I am satisfied with the applicant's submission which states that the minor pipe is to be for the filling of troughs.

The Planning Authority refers to the control of the existing facility under a discharge licence and that the principle environmental issues associated with the existing fish farm are addressed thereunder. The appellant has queried whether the existing facility is polluting the river Douglas. I note that there is absolutely no evidence of pollution incidents, breaches of licence or complaints and in the event of their occurrence there are extensive powers of remedy available to the local authority and other bodies.

I note the recommendation of DAHG that prior notice of the use of any pesticides for disease control must be notified to the Local Authority and this Department. I consider that this matter is properly addressed under the trade effluent discharge licence. However, I do recommend the attachment of a condition that the applicant obtain a discharge licence prior to commencement of development.

In relation to recommended planning conditions I propose two conditions relating to site personnel for the construction and operational phases, which I consider are necessary in the interest of ensuring proper implementation of the mitigation measures in the NIS and to allow for further consultation between the IFI and the operator including to address unforeseen events and normal maintenance issues.

CONCLUSIONS AND RECOMMENDATION

I conclude that

- (a) subject to full implementation of the mitigation measures set out in the NIS, the proposed development would not result in significant adverse environmental effects and in particular the development would not adversely affect the integrity of European sites having regard to the conservation objectives of the Blackwater cSAC,
- (b) the development would not unduly affect the residential or rural amenities of the area,
- (c) the development is in accordance with the development plan policies and with the proper planning and sustainable development of the area.

I recommend that the Board uphold the decision of the Planning Authority to grant permission for the reasons and considerations and subject to the conditions below.

REASONS AND CONSIDERATIONS

Having regard to the provisions of :

- (a) the EU Habitats Directive (92/43/EEC),
- (b) the European Communities (Birds and Natural Habitats) Regulations 2011,
- (c) the provisions of the Cork County Development Plan 2009
- (d) and the nature, scale and location of the works and the pattern of development in the area

it is considered that subject to compliance with the conditions set out below the proposed development would not adversely affect the environment and would not affect the amenities of the area. The proposed development would therefore be in accordance with the proper planning and sustainable development of the area.

Having considered the Natura Impact statement submitted with the application and the mitigation measures contained therein, and having carried out an Appropriate Assessment of the potential impact on the affected Natura 2000 site Blackwater River candidate Special Area of Conservation Site Code 002170, it is considered that the proposed development would not be likely to have a significant effect individually or in combination with other plans or projects, on the amenities of the area or on these European sites. It is considered that the proposed scheme would not have an adverse effect on the integrity of the European sites, having regard to their relevant conservation objectives.

CONDITIONS

1. The proposed development shall be carried out and completed in accordance with the plans and particulars lodged with the application on the 26th of April 2013, except as may otherwise be required in order to comply with the following conditions.

Reason: In the interest of clarity.

2. Prior to the commencement of development the developer shall obtain a licence under the Water Pollution Act 1977 as amended, which shall govern the operation of the fish farm.

Reason: In the interest of clarity.

3. The developer shall arrange for a suitably qualified and experienced ecologist, to oversee and be responsible for the full application of mitigation measures contained in the Natura Impact Statement submitted with the application.

Reason: In the interest of clarity and the proper planning and sustainable development of the area and to ensure the protection of a European Site.

4. The construction of the development shall be managed in accordance with a Construction Management Plan, which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. This plan shall provide details of intended construction practice for the development, including hours of working, noise management measures, parking and on-site storage and off-site disposal of construction/demolition waste. The Plan shall incorporate relevant mitigation measures set out in the Natura Impact Statement including those related to silt control and refuelling.

Reason: In the interest of the protection of the environment, public safety and residential amenity.

5. The operator shall designate a named person (and replacement when and wherever applicable) who shall be responsible for the operation and maintenance of the development and this person shall be formally made known to Inland Fisheries Ireland and the planning authority.

Reason: In the interest of the proper planning and sustainable development of the area.

6. The developer shall comply with the archaeological requirements of the Department of Arts, Heritage and the Gaeltacht in relation to monitoring of works and shall:

- (i) employ a suitably qualified archaeologist who shall establish a buffer zone around the mill building, which is part of recorded monument CO-028-019, and shall monitor all site excavation works particularly those which may impact on the former mill race and on underwater archaeology, and
- (ii) facilitate the preservation, recording and protection of archaeological materials and features that may exist within the site, and
- (iii) provide arrangements for the recording and removal of any archaeological material which it is considered appropriate to remove.

Reason: In order to conserve the archaeological heritage of the site and to secure the preservation and protection of any remains that may exist within the site.

7. Noise emissions from site operations shall not exceed the background noise level by more than 5dB, when measured at any external position at an occupied dwelling. All sound measurements shall be carried out in accordance with ISO Recommendations R 1996, "Assessment of Noise with Respect to Community Response" as amended by ISO Recommendations R 1996/1, 2 and 3, "Description and Measurement of Environmental Noise", as appropriate.

Reason: To protect the amenities of properties in the vicinity of the site.

8. Receptacles for waste shall be provided and available for use at all times on the premises in accordance with details which shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: To provide for a satisfactory standard of development.

9. All above ground storage tanks shall be double-skinned or shall be contained within a bunded area of sufficient capacity.

Reason: To provide for a satisfactory standard of development.

Mairead Kenny

Senior Planning Inspector

29th October 2013