



An  
Bord  
Pleanála

## Inspector's Report

### ABP-305439-19

---

<b>Development</b>	Pay-to-use portable waste compactor for residual and food waste and pay-to use portable waste compactor for mixed recyclables.
<b>Location</b>	Emo Oil Mooncoin Stores , Main Street , Mooncoin, Co. Kilkenny
<b>Planning Authority</b>	Kilkenny County Council
<b>Planning Authority Reg. Ref.</b>	1994
<b>Applicant(s)</b>	Environmental Compact Systems Limited
<b>Type of Application</b>	Permission
<b>Planning Authority Decision</b>	Grant Permission
<b>Type of Appeal</b>	Third Party
<b>Appellant(s)</b>	Jim Dowdall
<b>Observer(s)</b>	none.
<b>Date of Site Inspection</b>	31 <sup>st</sup> December, 2019
<b>Inspector</b>	Stephen Kay

## 1.0 Site Location and Description

- 1.1. The appeal site is located within Mooncoin village on the N24 national road that connects Waterford and Carrick on Suir. The site is located at the southern end of the village and on a prominent corner site on the entrance to the Main Street from the Waterford direction.
- 1.2. The site is currently occupied by a filling station which has a forecourt building and canopy with petrol pump islands located at the western side of the site. The eastern side of the site is largely undeveloped and is occupied by parking and landscaped areas.
- 1.3. There are houses located to the east of the site on the opposite side of the local road and which are c.6.5 metres from the boundary with the appeal site and c.7 metres from the location of the proposed development at the closest point. Similarly, to the south west of the site on the opposite side of Main Street from the appeal site, there are single storey houses.
- 1.4. The stated area of the appeal site is 0.16 ha.

## 2.0 Proposed Development

- 2.1. The proposed development comprises the placement of two pay to use (PTU) portable waste compactor units on the site. These units are proposed to be located at the eastern end of the site and such that they would be separated from the closest part of the forecourt building by a distance of approximately 21 metres.
- 2.2. The two units are proposed to provide for the acceptance of residual and food waste in a split compartment arrangement one unit and mixed recyclables in the other. The units are proposed to be located along the north east boundary of the site close to the eastern end / corner of the site and in a part of the site that is currently occupied by car parking and a grassed landscape area.
- 2.3. The containers are proposed to be fitted with a weighing system and that each waste stream deposited into the containers would be weighed. In the case of the dry recyclables and the domestic waste collection vessels the collection containers themselves resemble clothing collection containers with a rotating opening section

for the deposition of materials before it is entered into the storage container. The domestic waste unit would have a door at the rear for the deposition of food waste.

- 2.4. The application documentation indicates that customers of the proposed units would have to pre-register and then credit their account. A code is entered at the appropriate bin which will enable access.
- 2.5. It is stated that the units would likely require emptying every 3 – 4 weeks and when removed from site the units are proposed to be transported to Glanway Limited which is located at Belview Port in Waterford.
- 2.6. The dimensions of the proposed units are c.2.3 metres in height by c.4.25 metres long and c.1.9 metres in width. On this issue, it is noted that the scale stated on the drawings submitted (1:5 at A4) would appear to be incorrect.

## **3.0 Planning Authority Decision**

### **3.1. Further Information**

Prior to issuing a Notification of decision, the Planning Authority requested further information on the following issues:

- Submission of details with regard to odour and other nuisance controls including at times of hot weather.
- Clarification as to whether the residual food waste and other waste is proposed to be in separate containers.
- Measures to prevent illegal dumping / fly tipping at the sites.
- Clarification as to how leachate will be controlled and disposed of at the site.
- Comment on the third party submissions received.
- Request that section 3 of the application form relating to commercial developments be completed.

The following is a summary of the main information submitted in response to the request for further information:

- That all the units are fully sealed and such that no adverse issues with regard to odours or vermin have been experienced at the c.60 PTU compactors installed in more than 10 council areas. No complaints have been received over the 10 year period in relation to these units.
- That the food waste is stored in a compartment within the residual waste container which has a separate access door.
- That there has not been an experience of fly tipping / dumping at other sites and it is understood that during the c.5 year period that a PTU was located at Mooncoin that this was also the position. The location will be closely monitored by CCTV.
- Regarding leachate, the containers are fully sealed and any leachate is held within the containers until it is disposed of.
- It is anticipated that the collection of the containers will be every 3-4 weeks at a time between 12 am and 6 am.
- The payment system is outlined and states that customers can register and pre pay into their accounts. The relevant website is [www.binabag.ie](http://www.binabag.ie). When arriving at a disposal unit the customer enters their mobile number and a pin code before selecting the material they wish to dispose. If they have credit on their account then the relevant compartment is open and material can be deposited for weighing.
- Stated that it is also possible for tickets for disposal of waste to be purchased in the shop on site. The ticket has a code that is entered into the machine.
- Stated that if pay by weight becomes a legal requirement that the machine can accommodate this charging method.
- Completed for 3 / Appendix 3 submitted.

### 3.2. Decision

The Planning Authority issued a Notification of Decision to Grant Permission subject to 4 no. conditions, the most notable of which is considered to be as follows:

- Condition No.3 requires that the developer, if requested by Kilkenny County Council, shall undertake monitoring to demonstrate that the development permitted *‘is not resulting in significant impairment or significant interference with amenities or the environment on or beyond the site.’*

### 3.3. Planning Authority Reports

#### 3.3.1. Planning Reports

The report of the planning officer notes that the principle of such units is established at other service station sites and notes the concerns of the environment department and recommendation for further information. A second report subsequent to the submission of further information states that there is no objection and recommends a grant of permission that is consistent with the notification of decision which issued.

#### 3.3.2. Other Technical Reports

Environment – Initial report recommends further information on issues including potential odour / nuisance issues, separation of waste streams, prevention of illegal dumping and the control of leachate. Second report subsequent to the submission of further information stated that there is no objection subject to conditions. Report also notes that a Waste Facility Permit / Certificate of Authorisation is required in respect of this development.

Fire Officer – Report states that development will not require a fire certificate.

Road Design – No objection.

### 3.4. **Third Party Observations**

Submission from third party objecting to proposed development on grounds that include

- No information regarding environmental controls,
- No information regarding control of vermin,
- Unclear if the food waste and general waste is stored in the one container / chamber,
- No measures proposed to prevent dumping / fly tipping,
- No details regarding frequency of collection and any likely traffic implications.
- No information regarding control measures in the event of spillages either from a defective unit or an incident during removal of the unit.
- That such units are unsuitable for a location close to an outlet where food is sold / forecourt shop.

## 4.0 **Planning History**

There is no reference to any planning history on the appeal file.

## 5.0 **Policy Context**

### 5.1. **Development Plan**

The site is located within the development boundary of Mooncoin village and on lands where Objective 3G (paragraph 3.3.5.3) is *'to facilitate the development of housing, economic services and infrastructure in smaller towns and villages of the county at a scale and character that is appropriate in order to sustain and renew populations and services in these areas'*.

## 5.2. Natural Heritage Designations

The closest European site to the appeal site is the Lower River Suir SAC (site code 002137) which is located c.2km to the west of the appeal site at the closest point.

The features of interest of this site are as follows:

- Atlantic salt meadows (*Glauco-Puccinellietalia maritima*)
- Mediterranean salt meadows (*Juncetalia maritimi*)
- Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitriche-Batrachion* vegetation.
- Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels.
- Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles
- Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*)
- *Taxus baccata* woods of the British Isles
- *Margaritifera margaritifera* (Freshwater Pearl Mussel)
- *Austropotamobius pallipes* (White-clawed Crayfish)
- *Petromyzon marinus* (Sea Lamprey)
- *Lampetra planeri* (Brook Lamprey)
- *Lampetra fluviatilis* (River Lamprey)
- *Alosa fallax fallax* (Twite Shad)
- *Salmo salar* (Salmon)
- *Lutra lutra* (Otter)

The conservation objectives for this site are to restore the favourable conservation condition of the relevant species or habitat based on a number of specified attributes and targets.

### 5.3. EIA Screening

The nature of the proposed development does not meet any class of development specified in either Part 1 or Part 2 of the Fifth Schedule of the Planning and Development Regulations, 2001 (as amended).

Class 11(b) of Part 2 under the heading of Other Installations states that the following shall be development for the purposes of EIA:

*'Installations for the disposal of waste with an annual intake greater than 25,000 tonnes not included in Part 1 of this schedule'.*

The EC Guidance document 'Interpretation of definitions of product categories of Annex I and II of the EIA Directive' with regard to Class 11(b) refers back to a definition of 'disposal' cited under Class 9 of Part I. This in turn makes reference to the definition of 'disposal' contained in Article 3(19) of the Waste Framework Directive as follows: *'any operation which is not recovery even where the operation has as a secondary consequence the reclamation of substances or energy'.*

In the case of the proposed development, the process on site clearly involves waste as the material in question is material which the holder discards, or intends or is required to discard. I do not however consider that the proposed development involves waste 'disposal' in that it is not the location for the final placement of waste material. The nature of the proposed development is such that it comprises the on site temporary storage of waste material prior to transport off site to a waste disposal / recovery facility. No treatment or other process is proposed to be applied to the waste collected on site. For this reason, I do not consider that the nature of the proposed development is such that is a class of development that comes within the scope of development for which EIA is required.

Notwithstanding this assessment, I note that the relevant threshold in respect of Class (b) is 25,000 tonnes. No capacity in terms of tonnes is provided for the type of collection bins proposed to be installed on site. It is however stated that it is envisaged that the bins would require collection every 3 to 4 weeks. At a three week frequency this would mean approximately 17 collections per annum and would require an average collection of approximately 1.5 tonnes of material.



## 6.0 The Appeal

### 6.1. Grounds of Appeal

The following is a summary of the main issues raised in the third party appeal received by the Board:

- That the planning authority erred in granting permission because it has not been clearly demonstrated that the development will operate in compliance with the *Waste Management (Facility and Permit) Regulations 2007* and in particular that the applicant is a fit and proper person who has sufficient technical knowledge and where the facility manager would be on site at all times during waste acceptance.
- That the planning authority did not determine the nature and extent of the proposed development and therefore did not make an informed assessment as to whether an EIA is required as per Schedule 5, Part 2, Class 11(b) of the Regulations.
- That the planning authority failed to determine how the operator would ensure that the waste streams were segregated as required by the waste management Regulations 2007-2016.
- That there is no indication that screening for Appropriate Assessment was undertaken.
- That no online access to the further information response was made available.
- That the information presented does not allow an assessment of traffic safety to be undertaken. A Traffic Safety Assessment and Road Safety Audit should have been requested.
- That one of the conditions notes that a Waste Facility Permit or Certificate of Authorisation is required and indicates that the nature and extent of development has not been determined.
- That no operating hours are conditioned and therefore has the potential to generate fly tipping.

## 6.2. Applicant Response

There is no first party response to the grounds on file recorded as being received by the Board.

## 6.3. Planning Authority Response

The following is a summary of the main issues raised in the Planning Authority response to the grounds of appeal.

- That the environment section of the council consider that the applicant has satisfactorily demonstrated how waste shall be segregated and managed.
- That the applicant will be required to obtain a waste permit and to abide by any conditions attached to such a permit.
- That the scale and nature of the development is such that there is no real likelihood of any significant effects on the environment arising from the proposed development. An EIA is not therefore required.
- A screening assessment for AA was undertaken that demonstrated that having regard to the scale and nature of the development and its separation from any European sites.
- That the file was available for public inspection.
- That the size and layout of the site and its location within the 50 km/hr speed limit zone is such that the development is considered to be acceptable in terms of traffic safety. A traffic safety audit is not considered necessary.
- That the applicant submitted additional details regarding the nature and extent of the development as part of their response to further information.
- That conditions regarding the operation and environmental management of the site / development will be determined under a waste facility permit / certificate of authorisation pursuant to condition No.3 attached to Condition No.3 of permission Ref. P19/94.

## 7.0 Assessment

7.1. The following are considered to be the main issues in the assessment of the subject appeal:

- Principle of development,
- Impact on amenity,
- Traffic Issues,
- Requirement for EIA,
- Other issues
- Appropriate Assessment

### 7.2. Principle of Development,

7.2.1. The appeal site is located within the identified development boundary of Mooncoin as set out in the Kilkenny County Development Plan. There are no specific land use zoning objectives identified for the settlement, however the general objective for lands within the identified development boundary is '*to facilitate the development of housing, economic services and infrastructure in smaller towns and villages of the county at a scale and character that is appropriate in order to sustain and renew populations and services in these areas*'. The proposed development is considered to comprise a service for the local area which, other relevant planning considerations being met, it is considered to be acceptable in principle.

7.2.2. It is also noted that the site on which the development is proposed is currently in commercial use and such that the proposed development would not be inconsistent with the existing use of the site.

### 7.3. Impact on Amenity,

7.3.1. There are a number of issues of relevance under the general heading of amenity. Firstly, the scale and design of the proposed collection bins measuring c.2.3 metres in height by c.4.25 metres long and c.1.9 metres in width are not considered to be of a scale that they would result in a form of development that would be excessively

visually prominent or inconsistent with the existing commercial use of the site as a filling station. No information has been submitted indicating that there is proposed to be any ancillary signage associated with the development and no such development would be authorised by a grant of permission. The proposed development is therefore considered to be acceptable in terms of its visual impact.

7.3.2. The area of the appeal site where the units are proposed to be located are in relatively close proximity to the recently constructed houses to the north east. Issues of odours and other nuisances are therefore of significant importance to ensure the protection of the residential amenities of these properties. As part of the assessment of the proposed development, the Planning Authority requested that further details of the design of the proposed containers would be submitted and that details regarding the potential for odours, dumping and control of leachate would be submitted. The response to these issues indicates that the containers proposed to be installed are sealed units from which leachate if generated cannot escape and minimising the risk of odours. As noted by the Planning Authority, the proposed development requires that a Waste Facility Permit / Certificate of Authorisation be obtained from the local authority in respect of this development. Such a permit would only be granted in the event that the local authority is satisfied that the development will not have adverse impacts on the environment in the vicinity of the site and issues relating to the management of the site and the control of odours and other nuisances from the development would be addressed by conditions attaching to the permit. In view of the requirement for a waste permit and the details supplied with the application regarding the design of the proposed units and proposed operation of the site I am satisfied that the proposed development would not be likely to have any significant adverse impacts on the environment in the vicinity of the site.

7.3.3. I note the specific issues raised by the third party appellant in this case relating to compliance with the requirements of the Waste Management (Facility and Permit) Regulations and specifically relating to whether the applicant is a 'fit and proper person' for the purposes of the Regulations and whether there is adequate means to ensure that waste streams are not contaminated. It is considered that these are issues that can only be addressed as part of the assessment of any future application for a Waste Permit / Certificate of Authorisation and that the local authority will only grant the appropriate permit if it is satisfied that these issues are

addressed to its satisfaction. In the absence of the required permit, the development cannot be operated.

7.3.4. The third party appellants note the fact that there are no proposed hours of operation for the development identified in the application or in the conditions attaching to the grant of permission. On this issue, I note the concerns expressed by the third party that the imposition of hours of operation could result in an increased risk of material being dumped at the site. Against this, the proximity of houses to the east of the site is such that any out of normal hours use of the facility would have the potential to result in disturbance and impact on residential amenity. The filling station site itself is indicated as operating from 07.00 – 22.00 hrs. and there is currently no way of restricting vehicular access to the site out of hours. It is also not clear that the design of the proposed units would have the facility to restrict the hours / times during which they would operate and accept waste. On balance, given the nature of the equipment and the likely limited operational noise and the risk of material being dumped were the units not operating on a 24 hour basis, it is not considered appropriate that the operating hours of the proposed waste compactor units would be restricted.

7.3.5. Condition No.3 attached to the Notification of Decision to Grant Permission issued by the Planning Authority requires that the developer, if requested by Kilkenny County Council, shall undertake monitoring to demonstrate that the development permitted *'is not resulting in significant impairment or significant interference with amenities or the environment on or beyond the site.'* This condition is considered appropriate to allow for any monitoring of the operation of the site as may be required to demonstrate compliance with conditions attached to any waste permit issued.

#### 7.4. **Traffic Issues,**

7.4.1. I note the issues raised by the third party appellant with regard to traffic and access issues and the contention that a Traffic Impact Assessment and a Road Safety Audit should have been requested. No projected traffic volumes at the site are indicated in the application documentation. Based on the projected emptying of the bins every 3 to 4 weeks as stated by the first party, a total of 17 no. collections per annum would be generated which is very minor in the context of the existing use of the site.

7.4.2. Traffic generated by users of the facility is difficult to estimate accurately based on the information presented, however I note that the nature of the site with existing entrances located within the 50km/hr zone. Visibility at the existing site accesses was observed to be good at the time of inspection of the site and there are no apparent conflicts with other major access points. The configuration of the site is such that traffic accessing the proposed development at the eastern end of the site would not conflict with existing traffic using the site to purchase fuel and there is adequate parking and circulation space at the eastern end of the site in the vicinity of the proposed development to facilitate set down / unloading of waste material and vehicle movements. In view of this, it is not considered that the submission of a road safety audit is required in this case.

7.4.3. With regard to the contention that a Traffic Impact Assessment should have been required, I note the criteria where a TTA or TIA should be requested as set out in the '*Traffic and Transportation Assessment Guidelines*' published by the National Roads Authority (now TII). The nature of the proposed development is in my opinion such that none of the thresholds set out in this document are met and that the submission of a Traffic Impact Assessment is not therefore required.

## 7.5. Requirement for EIA,

7.5.1. Issues relating to EIA and the screening of the proposed development for EIA is discussed in detail at section 5.3 of this report. As concluded in section 5.3, the nature of the proposed development is such that it does not meet any class of development specified in either Part 1 or Part 2 of the Fifth Schedule of the Planning and Development Regulations, 2001 (as amended). Specifically, and noting the comments of the third party appellant regarding EIA, the nature of the proposed development is not such that it is an installation for the disposal of waste as specified in Class 11(b) of Part 2 of the Regulations under the heading of Other Installations.

## 7.6. Other Issues

- 7.6.1. It is noted that the Notification of Decision issued by the Planning Authority includes a requirement for the payment of a development contribution in accordance with the provisions of the adopted s.48 scheme. In the event of a grant of permission it is recommended that a condition specifying a contribution would be attached.

## 7.7. Appropriate Assessment

- 7.7.1. The proposed development is located within the development boundary of Mooncoin and on an established commercial / retail site that is in use as a filling station and associated forecourt shop. The proposed development comprises the installation of two waste compactors on the site to be operated on a pay to use basis. Facilities are proposed to be provided for the collection of mixed recyclables in one container and residual / domestic waste and food waste in the second container.

- 7.7.2. The closest European site to the appeal site is the Lower River Suir SAC (site code 002137) which is located c.2km to the west of the appeal site at the closest point.

The features of interest of this site are as follows:

- Atlantic salt meadows (*Glauco-Puccinellietalia maritima*)
- Mediterranean salt meadows (*Juncetalia maritimi*)
- Water courses of plain to montane levels with the *Ranunculion fluitantis* and *Callitriche-Batrachion* vegetation.
- Hydrophilous tall herb fringe communities of plains and of the montane to alpine levels.
- Old sessile oak woods with *Ilex* and *Blechnum* in the British Isles
- Alluvial forests with *Alnus glutinosa* and *Fraxinus excelsior* (*Alno-Padion*, *Alnion incanae*, *Salicion albae*)
- *Taxus baccata* woods of the British Isles
- *Margaritifera margaritifera* (Freshwater Pearl Mussel)
- *Austropotamobius pallipes* (White-clawed Crayfish)
- *Petromyzon marinus* (Sea Lamprey)

- Lampetra planeri (Brook Lamprey)
- Lampetra fluviatilis (River Lamprey)
- Alosa fallax fallax (Twaiite Shad)
- Salmo salar (Salmon)
- Lutra lutra (Otter)

The conservation objectives for this site are to restore the favourable conservation condition of the relevant species or habitat based on a number of specified attributes and targets.

7.7.3. The proposed development could potentially impact on the above listed qualifying interests were the containers to be the subject of a spillage during operation or handling. In such a circumstance there is potential for material that would be discharged to impact negatively on a number of the above listed species and habitats and in particular species that would be sensitive to water pollution and a deterioration in water quality including salmon and lamprey species.

7.7.4. There are no other plans or projects in the vicinity of the site that have the potential to give rise to in combination effects with the proposed development.

7.7.5. The risk arising from the proposed development impacting on the Lower River Suir SAC requires a hydrological pathway between the appeal site and the SAC. From an inspection of the environs of the site and available mapping and NPWS documentation, there is no clear hydrological pathway that connects the appeal site and the Lower River Suir SAC. In particular, the roadside drain or stream that adjoins the appeal site to the north and which runs along the western side of the local road to the north of the site does not have a clear connection to the SAC.

7.7.6. Having regard to the above, the proposed development is not likely to have significant effects on the Lower River Suir SAC in the light of its conservation objectives.



## 8.0 Recommendation

- 8.1. Having regard to the above, it is recommended that permission is granted based on the following reasons and considerations and subject to the attached conditions:

## 9.0 Reasons and Considerations

Having regard to the location of the site within the development boundary of Mooncoin and to the established commercial use of the site and the pattern of development in the area, it is considered that, subject to compliance with conditions below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would not be prejudicial to public health and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

## 10.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application as amended by the further plans and particulars submitted on the 30<sup>th</sup> day of July, 2019 except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

**Reason:** In the interest of clarity.

2. The developer shall pay to the planning authority a financial contribution of €150 (one hundred and fifty euro) in respect of public infrastructure and facilities benefiting development in the area of the planning authority that is provided or intended to be provided by or on behalf of the authority in accordance with the terms of the Development Contribution Scheme made under section 48 of the Planning and Development Act 2000, as amended. The contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate and shall be subject to any applicable indexation provisions of the Scheme at the time of payment. The application of any indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine.

**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

3. No development on foot of this permission shall be undertaken until such time as the developer has applied for and received confirmation from the local authority of a waste authorisation (Waste Permit / Certificate of Authorisation) relating to the development authorised by this permission and is compliant with any conditions that may be attached to such an authorisation.

**Reason:** To ensure the protection of the environment and compliance with the Waste authorisation legislation.

4. If requested by Kilkenny County Council, the developer shall facilitate or undertake monitoring to details specified by the local authority to demonstrate compliance with any conditions attached to any waste authorisation issued for the site or to demonstrate whether the permitted activity is or is not resulting in significant impacts on amenities or the environment on or beyond the site.

**Reason:** In the interests of public health and protection of the environment.

---

Stephen Kay  
Planning Inspector  
27<sup>th</sup> January, 2020