



An  
Bord  
Pleanála

## Inspector's Report ABP-305633-19.

### Development

Permission for the importation of 47,000 tonnes of soil and stones, to be spread on the site in three stages and over a period of between three and five years, the changing of existing land levels as part of this process, the use of an existing entrance and driveway in connection with this development and the creation of a temporary haul/access road linking the existing driveway with the works area (including a truck turning area), along with the installation of a wheel-wash and a portable toilet, with chemical treatment of effluent, for the duration of these site operations.

### Location

Fleshtown, Sallins , Co.Kildare.

### Planning Authority

Kildare County Council.

### Planning Authority Reg. Ref.

19/907.

### Applicant(s)

Julie Doyle.

### Type of Application

Permission.

<b>Planning Authority Decision</b>	Refuse.
<b>Type of Appeal</b>	First Party
<b>Appellant(s)</b>	Julie Doyle.
<b>Observer(s)</b>	None.
<b>Date of Site Inspection</b>	20/12/2019 & 21/01/2020.
<b>Inspector</b>	A. Considine.

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## 1.0 Site Location and Description

- 1.1. The subject site is located approximately 2.3km to the north west of the town of Sallins in Co. Kildare. Access to the site is over the local road network and ultimately off the local road, L-2004 which connects Clane to the regional road, the R409 to the west. The area is rural in character with a large number of detached houses forming ribbon development in the vicinity of the site. The site lies to the north of, and adjacent to, the Grand Canal and in proximity to Digby Bridge and Lock, both of which are identified in the List of Protected Structures for Co. Kildare.
- 1.2. The proposed site is set back from the public road and is to be accessed via an existing laneway which serves an existing commercial development to the north of the site. On the date of my inspection, there were a number of vehicles present in this area including buses, cars, truck and containers. There is also a weighbridge located immediately inside the electronic gates which restrict access to the site. This lane is located in an area which has somewhat restricted views to the south and there is a further junction almost directly across the public road. There is currently no direct vehicular access to the subject site, save over an existing greenfield site.
- 1.3. The site the subject of this appeal has a stated area of 3.2227ha (as per the application form but is indicated as being 3.95ha in the Planning Report) and is currently under grass. The field has an irregular shape and is bound by a stream to the west. The site levels fall from east to west, across the site, by approximately 5m from +80m OD to +75m OD. The site conditions vary across the site with evidence poor drainage, ponding and the presence of reeds to the west of the site, and in proximity to the stream. There are a number of land drains to the north west and south of the subject site.
- 1.4. The site is bound by trees and hedgerows and is visible from the existing banks of the Grand Canal walkway, to the south of the site. There is an area of transitional woodland located to the south east of the site which is identified as providing a 'stepping-stone' of habitat, which is likely to be important for birds and bats.

## 2.0 Proposed Development

2.1. Permission is sought, in order to improve the quality of the land for agricultural purposes, for the importation of 47,000 tonnes of soil and stones, to be spread on the site in three stages and over a period of between three and five years, the changing of existing land levels as part of this process, the use of an existing entrance and driveway in connection with this development and the creation of a temporary haul/access road linking the existing driveway with the works area (including a truck turning area), along with the installation of a wheel-wash and a portable toilet, with chemical treatment of effluent, for the duration of these site operations, all at Fleshtown, Sallins , Co.Kildare

2.2. The application included a number of supporting documents including as follows;

- Plans, particulars and completed planning application form
- Planning Report, which includes the response to the FI request from the Council dated 4<sup>th</sup> July, 2019

- Flood Risk Assessment:

The report is intended to satisfy the requirements of the County Council in terms of concerns relating to flood risk and seeks to quantify the risks and effects of any flooding, outline necessary mitigation measures, and provide recommendations on how to best manage any residual risks.

The report notes that the OPW Flood Maps show no historical flood events in the vicinity of the site and that watercourses in the area are not maintained by the OPW under an arterial drainage scheme and as such, the site is not within benefitting lands.

The pFRA maps show that the site is not at risk of fluvial flooding but that the western half of the site is potentially at risk of pluvial flooding. The area at risk of pluvial flooding extends northwest and then to the west, following the route of the surface watercourse in this area. The Assessment identifies the flood zones within the site and notes that filling is only to take place within Flood Zone C, and above the 76.3mOD.

Mitigation measures are proposed, and the Report concludes that adhering to the recommendations will ensure that the proposed works will not remove any

potential flood plain storage and that the development will not have a negative impact in this regard.

- Hydrogeological Assessment:

In addition to the FRA, a Hydrogeological Assessment was undertaken by the applicant which provides a description of the geological character of the site and details the nature, extent and complexity of the geological material from the surface downwards through the mineral subsoil and into the bedrock.

The report notes that the soil under the site is well drained and shallow and that the bedrock under the majority of the site is expected to be over 10m deep and is of limestone, in an area mapped as a locally important karstified aquifer. Though the site is underlain at depth by karstified bedrock, there are no karst features identified on the site or in the surrounding area.

The Assessment notes that the locality has a 'high' to 'moderate' groundwater vulnerability rating and concludes that the site is suitable for the importation of soil and stone to improve the land for agricultural purposes as there is a low to moderate risk to groundwater resources under the site.

The Assessment recommends the adherence to the recommendations of the submitted FRA with regard to avoiding the lower areas of the site for filling.

- An Assessment of Existing Entrance, which includes a Swept Path Analysis for an 8-wheeler truck

- Land Reclamation Report including drawings:

This report presents a topographical survey and assessment of the land, noting that there is an area of approximately 3.23ha of undulating ground with a large portion which is unproductive due to poor drainage. The land was surveyed to produce contours of the proposed fill area, to aid in determining the volume of material required to raise the land and to provide an even surface to facilitate agricultural activities.

The report includes details of the volume of material to be imported, the number of truck movements associated with the volume and the phasing of the works. The report also considers the effects of the works on drainage and presents details of operational matters.

It is concluded that the work proposed will provide a significant improvement

to the production capabilities of the agricultural land and is unlikely to have any adverse effects on drainage or flood risk.

- Ecological Impact Assessment (EclA), including a Tree Assessment:

The EclA details the findings of the assessment carried out at the site and its purpose is to provide a description of potential ecological impacts arising from the development proposed.

The Assessment concludes that no significant negative impacts on habitats or protected species are predicted. The EclA concludes that the development, singly or in conjunction with other development in the area will not impact negatively on any site of national or international importance.

In terms of the Tree Assessment, Appendix A of the EclA, it is submitted that the purpose of the survey was to identify, classify and catalogue the trees occurring within an area potentially affected by the construction of an access route and the development itself. The species in the hedgerows and treelines are noted and identified as is the area of woodland immediately to the south of the site. The report concludes that the trees should be retained as they are locally important ecological features with some displaying features that could potentially host bats.

- Noise Impact Study:

The report provides an appraisal of potential noise impacts associated with the proposed development. The report identifies the nearest occupied houses and the modelling includes the contribution of traffic noise and cumulative noise levels during the construction and operational phases of the development.

The report includes mitigation measures and concludes that noise associated with the development will be below the likely noise limits which will form part of the waste facility permit conditions. No residual impacts are predicted.

- Report on Proposed Mitigation of Wind Blown Dust from Site Works:

The purpose of this report is to assess the impact of the proposed development on dust emissions to the receiving environment and propose mitigation measures for same. In this regard a baseline dust assessment was conducted using 4 monitoring locations. Samples collected were tested with results presented in Table 2.2 of the report.

The sources of likely to impact on air quality are detailed in Section 3 of the report which also includes traffic management and dust generation control measures as well as operation management and dust control measures.

2.3. The development proposes to increase site levels by 1-1.5m across the site and there are differences between this application and that previously refused by An Bord Pleanala as follows:

- Working site area reduced from 3.9529ha to 3.2227ha.
- Volume of material to be imported reduced from 52,000 tonnes to 47,000 tonnes.

## 3.0 Planning Authority Decision

### 3.1. Decision

The Planning Authority decided to refuse planning permission for the proposed development for the following stated reasons:

1. The proposed development is located within a rural area designated High Amenity, where there is a designated proposed Natural Heritage Area (Grand Canal), Protected Structure (B14-46 – Digby Bridge and 16<sup>th</sup> Lock) and where it is the policy of the Planning Authority in the Kildare County Development Plan 2017-2023, to protect and enhance the County's landscape, and areas of High Amenity, by ensuring that development retains, protects and where necessary enhances the appearance and character of the existing local landscape. To permit the proposed development would contribute to the erosion of the natural rural character of the landscape in this area and, if permitted, would represent an undesirable precedent to further such development in this area. In this regard, the proposed development would materially contravene Policies LA2, WC3, WV1 and WV2 of the Kildare County Development Plan 2017-2023 and would therefore be contrary to the proper planning and sustainable development of the area.
2. The development, by reason of its nature, scale, location and intensity would, if permitted, give rise to the generation of additional traffic movements in the area which are unsustainable, would seriously injure the amenities of the area

and of property in the vicinity due to noise, traffic generation and general disturbance, during the proposed 3-5 year operational time period.

Furthermore, the increased volume of HGVs required to service the site would lead to further deterioration of an already structurally distressed local road network. The proposed development would constitute a traffic hazard and would therefore be contrary to the proper planning and sustainable development of the area.

3. Access to the site is proposed via a temporary road connecting to an existing entrance, laneway and yard permitted under ref. ref. 06/2713, condition no. 2 of which required the removal of all commercial development and reinstatement of that site to domestic use within five years i.e. 2013. The proposed development would therefore be facilitated by an unauthorised development accordingly would be contrary to the proper planning and sustainable development of the area.

### **3.2. Planning Authority Reports**

#### **3.2.1. Planning Reports**

The Planning report considered the proposed development in the context of the details submitted with the application, internal technical reports, planning history and the County Development Plan policies and objectives. The report also includes an Appropriate Assessment Screening Report.

The Planning Report concludes that the development would remove the local undulations, mounds and hollows which give the site a distinctive character, contrary to policies LA2, WC3, WV1 and WV2. It is considered that the activity required to achieve the end use is of a scale and type which is more akin to an industrial development than agricultural. In addition, it is submitted that planning permission was refused in 2013 for retention of the existing commercial premises through which access is proposed to the north east of the site. The PA maintains the same position for the proposed development in terms of impact to the rural area and to the amenity of the Grand Canal and surrounding area.

In terms of access and traffic, the Planning Report raises procedural issues with the proposed access to the site. Given the fact that the previously refused yard remains

in use in association with the applicants' waste disposal business and general haulage, it is considered that this comprises unauthorised development. The access to the subject site is also considered unauthorised and therefore, a grant of planning permission would facilitate the further use of an unauthorised development. While it is noted that An Bord Pleanála did not consider the road and traffic issues as a reason for refusal of the previous application, the Planning Report references the Transportation Department and District Engineer reports on the file which recommend refusal of permission on the grounds that the haul route is too narrow and not suitable for HGV traffic.

With regard to flooding, the Planning Report notes the submission of the FRA and Hydrogeological Assessment. It is noted that fill will only be deposited in areas outside Flood Zones A and B.

In terms of Ecology, the applicant notes the EclA submitted by the applicant, while the Noise Impact Assessment Report is noted for making no reference to the potential impacts of the development on the canal tow-path, which is used as an amenity area by the public.

The planning report concludes that notwithstanding the long-term proposed use of the site for agricultural purposes, the proposed development is not acceptable. The Planning Officer recommends that permission be refused for the proposed development. This Planning Report formed the basis of the Planning Authority's decision to refuse planning permission.

### 3.2.2. Other Technical Reports

**Environmental Health Officer:** No objection subject to compliance with conditions relating to air quality and noise.

**Transportation Department:** The report notes the planning history of the site and in its assessment notes that the local road is approximately 4.5m wide and is not suitable for 8-wheel rigid tipper HGVs as it would constitute a traffic safety hazard and the volume of HGVs would potentially lead to the structural deterioration of the road. The report recommends refusal of permission.

**Conservation Officer:** Refer to Heritage Officer for Natural Heritage Impact.

**Fire Service:** No objection.

**Water Services:** The report notes that a site-specific FRA has been carried out. It is recommended that the application be referred to Environment for effluent and IFI for their requirements. No objection subject to compliance with stated condition relating to land and roadside drainage.

**Environment Section:** Further information required in relation to the provision of a waste quarantine area.

The Board will note no further information request issued.

### 3.2.3. **Prescribed Bodies**

**Inland Fisheries Ireland:** The report raises a number of issues including as follows:

- The development is located within the catchment of the River Liffey which is highly sensitive in terms of the species it supports.
- Topographical alteration as proposed has significant potential to cause the release of sediments and pollutants into surrounding watercourses.
- Any stockpiling of topsoil must be considered and planned such that risk of pollution is minimised.
- A buffer of at least 10m from the onsite watercourse with no topographical alterations occurring should be in place.
- In order to protect the watercourse and its floodplain infilling should take place within flood zone C.
- All discharges to comply with Regulations.

**DoCHG:** As a condition of this application, care needs to be taken to avoid accidentally importing and spreading invasive alien plant species.

### 3.2.4. **Third Party Submissions**

There are no third-party objections/submissions noted on the planning authority file.

## 4.0 Planning History

The following is the relevant planning history pertaining to the subject site:

**ABP ref PL09.246621 (PA ref: 16/210):** The Board, on appeal, refused permission for the importation of 52,000 tonnes of soil and stones, to be spread on the land in three stages and over a period of between three and five years, the changing of the existing land levels as part of this process, the use of an existing entrance and driveway in connection with this development and the creation of a temporary haul/access road linking the existing driveway with the works area (including a truck turning area), along with the installation of a wheel-wash and a portable toilet, with chemical treatment of effluent, for the duration of these site operations at Fleshtown, Sallins, County Kildare for the following stated reason:

Having regard to the nature of the proposed development, that is, the raising of lands by means of filling with inert materials, and its location in an area identified by the Office of Public Works as being at risk of pluvial flooding, the Board is not satisfied on the basis of the information provided, that the proposed development would not cause or exacerbate flooding on adjoining lands contrary to national flood guidelines. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

**PA ref 03/653:** Christy Dolly sought permission for reinstatement and raising of approx. 9 acres of land for agricultural benefit using invert subsoil and topsoil only. The PA refused permission for 3 no. reasons relating to (1) traffic hazard and associated adverse impact on residential amenities due to significant additional traffic generated and the location of the site access in proximity to a junction; (2) erosion of rural character and serious injury to the visual amenities of the area, conflict with County Development Plan policy to preserve and protect the visual amenities of the area, undesirable precedent; (3) generation of unsustainable additional traffic movements, conflict with County Development Plan policy on sustainable development.

This application relates to the northern area of the current application site.

Adjacent Sites Within the Dolly Landholding:

Dolly Skip Hire premises to the east of the site, accessed via the same laneway.

Permission sought by Catherine Dolly as follows:

**PA ref. 06/2713:** Permission for (1) permission for a change of use from a domestic garage (permission for which was previously granted under planning ref. No. 93/1289) to a commercial shed; (2) retention permission for the commercial shed and yard, including the entrance/driveway off the public road, the truck wash, the domestic shed, and the refuelling facility and (3) Planning permission for a new commercial shed to include offices and toilet.

The PA granted a 5 year permission on the 31<sup>st</sup> of January, 2008.

Condition 3 of this permission stated as follows:

3. The use of the site for commercial purposes as detailed in condition 2 above shall expire not later than five years from the final grant date of this planning permission at which time all commercial related development shall be removed from the site and the overall site shall be restored to domestic use only, unless on or before that date planning permission has been granted for its retention.

**Reason:** To facilitate a reassessment of the development within a reasonable period of time.

**PA Ref. 13/491:** On the 20<sup>th</sup> of June, 2013, permission was sought for (1) The continuation of use of previously granted planning permission ref. 06/2713, primarily consisting of a commercially used site with all associated site services including sheds, entrance driveways, truck wash facilities and office areas as per said planning ref. file. Permission is also sought for a new shed structure on site intended for the servicing and maintenance of trucks and all associated site services. (2) Retention permission is also sought for the following: extended hard-standing yard areas to accommodate HGV and car parking onto site previously approved in PI. ref. 06/2713, provision of additional mobile office units, extension onto existing domestic shed previously approved in PI. 06/2713, weighbridge and relocation of re-fuelling compound on site and all associated site works

The PA, on 14<sup>th</sup> day of August, 2013, refused permission for 4 no. reasons relating to (1) contravention of rural development policies in development plan Chapter 10; (2) injury to the amenities of the area due to noise, traffic and general disturbance; (3) contravention of County Development Plan objective SO8 on rural settlements; (4) inappropriate use for agriculturally zoned lands.

On the date of my site inspection, I accessed the current proposed site over the driveway – the subject of the refused retention application above. In addition, this site was in use as a parking area for HGVs and buses, with cars also parked within the yard area and the weighbridge remains in place. There were also containers located on the site with the large shed also in use.

**Reg. Ref. 07/2747:** Permission sought by Dolly Skip Hire to carry out site improvement works including change of use of existing agricultural storage shed for the purpose of temporary storage of chain and lift skip containers and to re-surface a partially concreted yard. The PA, on the 16<sup>th</sup> of May, 2008, refused permission for 3 no. reasons relating to (1) landscape and visual impacts; (2) contravention of County Development Plan policies on development in rural areas; (3) serious injury to the amenities of the area due to noise, traffic and general disturbance.

**Reg. ref. 08/2169:** Permission sought by Paul Dolly to construct a dormer bungalow and wastewater treatment system on a site to the immediate south of the laneway access to the subject site, north east of the current proposal. The PA refused permission for 4 no. reasons relating to (1) excessive density of development in a rural area, contravention of County Development Plan rural housing policy; (2) undesirable ribbon development; (3) unsustainable development; (4) inadequate sight distances at vehicular access.

#### Adjacent Site to Southeast

**Reg. ref. 04/450:** Relating to a site on the southern side of the Grand Canal, south east of the subject site. Permission sought by Gerry Walsh to raise c. 1.7 ha of land by an average height of c. 2.5m above ground level together with its restoration and rehabilitation. The PA had previously refused permission for a similar development at the site under reg. ref. 03/784. The PA also refused permission for 04/450. The Board refused permission, ref. PL09.207252, for one reason relating to adverse

impacts on adjoining lands; adverse impact on drainage of subject site and adjoining lands; impacts on visual amenities and traffic impacts.

## 5.0 Policy and Context

### 5.1. Development Plan

5.1.1. The Kildare County Development Plan 2017-2023 is the relevant policy document pertaining to the subject site. The site is located within the rural area.

5.1.2. Chapter 5 of the Plan deals with Economic Development, Enterprise and Tourism where section 5.12 deals with Rural Enterprise

5.1.3. Chapter 7 of the Plan deals with Infrastructure, with Section 7.2 dealing with Infrastructure provision, including 7.2.4 Flooding and 7.5.5 detailing the policies relating to Surface Water and flooding. Section 7.6 relates to Environmental Services. It is the stated aim of the Plan 'to conform to European, National and regional policies in relation to the provision of waste management and to protect and enhance water, air and noise quality'. Section 7.6.5 deals with policies relating to Waste management.

5.1.4. Chapter 10 of the Plan deals with Rural Development and Section 10.5 details the Council's policies in this regard.

5.1.5. Chapter 12 of the Plan deals with Architectural & Archaeological Heritage. Digby Bridge (and Lock) is listed as protected structure B14-46, and is listed on the NIAH, ref: 11901403. Section 12.4 deals with protected structures including relevant policies, including:

- PS1 which seeks to conserve and protect buildings, structures and sites
- PS 2 which seeks to protect the curtilage of protected structures and to refuse planning permission for inappropriate development which would adversely impact on the special character of the protected structure.

Section 12.4.3 deals with architectural conservation objectives including objective AAO 2 which relates to the Royal Canal and Grand Canal, and ACO 3 which relates to road bridges.

- 5.1.6. Chapter 13 of the Kildare County Development Plan deals with Natural Heritage & Green Infrastructure and Section 13.4 presents the relevant natural heritage policies and objectives. Section 13.5.2 deals with Natural Heritage Areas. Section 13.10 deals with Green Infrastructure with 13.10.2 dealing with Inland Waterways Network.
- 5.1.7. Chapter 14 of the plan deals with Landscape, Recreation and Amenity and includes, in Section 14.4, a Landscape Character Areas map 14.1. The subject site is located within the 'Northern Lowlands' landscape character area, which is classified as a Class 1, low sensitivity landscape which are areas 'with the capacity to generally accommodate a wide range of uses without significant adverse effects on the appearance or character of the area'.

In addition to the above, Section 14.5.4 of the Plan deals with the Grand and Royal Canal Corridors with Section 14.6 dealing with Scenic Routes and Protected Views, including 14.6.1 which relates to views to and from the county's waterways: Grand Canal, Royal Canal, River Liffey, River Barrow and the Rye Water River. In addition, the site is located within an area designated as an Area of High Amenity associated with the Grand Canal. Table 14.9 of the Plan lists views to and from bridges on the Grand Canal including Digby Bridge, ref. GC5.

Section 14.8 and 14.9 of the Plan presents the general landscape and scenic routes and protected views policies relevant to the site and area.

Section 14.11 of the Plan deals with Recreation and Amenities and identifies the Grand Canal under Countryside Recreation activities for walking.

- 5.1.8. Chapter 17 of the plan deals with Development Management Standards with Section 17.10 dealing with Waste Disposal and Recovery, and Section 17.10.1 dealing with Waste Recovery / Disposal facilities.

## 5.2. **Natural Heritage Designations**

The site is not located within any designated site. The closest Natura 2000 site is the Ballynagagh Bog SAC (Site Code: 000391) and the Ballynagagh Lake SAC (Site Code 001387, both located approximately 5km to the north west of the site. Mouds Bog SAC (Site Code: 002331) is located approximately 7.5km to the south west of the site. The Grant Canal pNHA, (Site Code 002104), is located adjacent to the subject site, and within 30m.

### 5.3. Environmental Impact Assessment

5.3.1. The requirement for EIA of certain types of developments is transposed into Irish legislation under the Planning and Development Act 2000, as amended and the Planning and Development Regulations 2001 as amended. Schedule 5, Part 1 of the Regulations provides a list of projects which are subject to mandatory EIA based on, *inter alia*, their scale, nature, location and context. Part 2 of Schedule 5 includes a list of projects that require EIA where specific thresholds are breached or where it is determined that there is potential for significant environmental impact.

5.3.2. In this context, the following Schedule 5 Part 1 projects relate to waste management:

10. Waste disposal installations for the incineration or chemical treatment as defined in Annex IIA to Directive 75/442/EEC under heading D9, of non-hazardous waste with a capacity exceeding 100 tonnes per day.

The development does not come within the scope of the above.

5.3.3. Schedule 5 Part 2 projects

1. Agriculture, Silviculture and Aquaculture
  - (c) Development consisting of the carrying out of drainage and/or reclamation of wetlands where more than 2 hectares of wetlands would be affected.
11. Other projects
  - (b) Installations for the disposal of waste with an annual intake greater than 25,000 tonnes not included in Part 1 of this Schedule.

5.3.4. Article 92 of the Planning and Development Regulations, 2001, (as amended) defines sub-threshold development, as 'development of a type set out in Schedule 5 which does not exceed a quantity, area or other limit specified in that Schedule in respect of the relevant class of development'.

5.3.5. The Board will note the figures presented by the applicant in terms of the volume of inert material waste intake will be 47,000 tonnes over a period of 3 -5 years.

5.3.6. In this context, together with the fact that the development, if permitted, will require a Waste Permit, it is unlikely that the 25,000 tonne per year maximum will be reached, and therefore, the development does not require mandatory EIA. The need for

environmental impact assessment, therefore, can be excluded at preliminary examination.

## 6.0 The Appeal

### 6.1. Grounds of Appeal

This is a first party appeal against the decision of the Planning Authority to refuse planning permission for the proposed development. The appeal presents a planning history for the site and the issues raised are summarised as follows:

- The application sought to address the Boards sole reason for refusal of a larger version of the currently proposed development.
- The reason for refusal relating to rural development has been considered by the Board under the previous application and it is requested that the Board carry its previous conclusion forward into this assessment and conclude that agricultural development is acceptable in the open countryside.
- In terms of traffic safety, it is noted that new issues were raised in the Planning Officers report in relation to structural stability. There is no evidence to support such claims and it is requested that the Council provide technical details which explains the nature of such difficulties and identifies the manner in which the proposed low-profile activity cannot be accommodated on the haul route.
- In terms of the issue arising in relation to the status of the access road, it is submitted that the Councils reason for refusal is predicated on the assumption that permission reg. 06/2713 required the removal of the driveway which is to serve this proposal. This issue was not raised on the last occasion and does not represent the understanding of events. It is considered that the decision required the removal of the entrance and driveway.
- Case law is cited in relation to the above and it is submitted that it is appropriate for the Board to acknowledge the existing of illegal but immune development when deciding this proposal and a ruling of the UK High Court endorses the concept of an 'existing use right'.

- It is open to the Board to address the issue, should it endorse the PAs perspective, through the attachment of a Grampian condition to the effect that ‘no development shall commence until or unless a permission has been granted for the retention of the existing access and driveway and for the use of this feature as part of the proposed development’.

It is requested that the Board overturn the Councils decision and to permit the development.

## 6.2. Planning Authority Response

The Planning Authority responded to the first party appeal advising as follows:

- It has been the PAs consistent view that the proposed development is not suitable for the rural area. This is the third application for infilling of the site which has been refused.
- Notwithstanding the previous ABP decision, the PA wish to highlight the importance of the canal and tow-path to the area, and the increasing awareness of opportunities to provide amenities for locals as well as attracting investment and tourism to the area in light of developments such as blueways and greenways.
- It is considered that the proposed development will impact on the visual amenity and rural amenity of the area.
- The access to the site is over an unauthorised entrance / driveway which is required to be removed under condition 3 of decision PA ref. 06/2713. The entrance was the part subject of a retention application under PA ref. 13/491, which was refused planning permission by Kildare County Council.
- With regard to the appellants reference to UK case law suggesting that the Board can permit the proposed development despite the unauthorised development upon which the development is reliant, Section 34(2)(a)(va) is referred to.
- The PA also note the appellants suggestion that the Board grant permission subject to a Grampian condition requiring retention permission be sought for

the development, the PA submits that their opinion has not changed over a period of 15 years.

The PA maintains the position that the development should be refused having regard to the three reasons outlined in its decision to refuse permission.

### 6.3. **Observations**

None.

### 7.0 **Assessment**

The Board will note that this appeal essentially relates to a repeat application of a previously refused proposed development. The current proposal is for a slightly smaller land fill development and the Planning Authority has refused permission for the development for 3 stated reasons, similar to those associated with the previous application. In its previous decision, the Board decided to refuse permission on the basis that it was not satisfied, based on the information provided, that the development would not cause or exacerbate flooding on adjoining lands, contrary to the national flood guidelines. In reaching this decision, the previous Inspectors report considered all aspects of the proposed development and the report included a number of concerns in relation to roads and traffic.

While I acknowledge the appeal submission from the planning authority, and the request that the Board carry its previous conclusions in relation to a number of planning issues into this assessment, I also note that there has been a new County Development Plan adopted since the previous decision. As such, I propose to consider the full proposed development de novo.

Having undertaken a site visit and having regard to the relevant policies pertaining to the subject site, the nature of existing uses on and in the vicinity of the site, the nature and scale of the proposed development and the nature of existing and permitted development in the immediate vicinity of the site, I consider that the main issues pertaining to the proposed development can be assessed under the following headings:

1. Principle of the proposed development
2. Flood Risk Assessment
3. Ecological Impacts
4. Visual Impacts
5. Roads & Traffic
6. Other Issues
7. Appropriate Assessment

### **7.1. Principle of the proposed development:**

- 7.1.1. Permission is sought, in order to improve the quality of the land for agricultural purposes, for the importation of 47,000 tonnes of soil and stones, to be spread on the site in three stages and over a period of between three and five years, the changing of existing land levels as part of this process, the use of an existing entrance and driveway in connection with this development and the creation of a temporary haul/access road linking the existing driveway with the works area (including a truck turning area), along with the installation of a wheel-wash and a portable toilet, with chemical treatment of effluent, for the duration of these site operations, all at Fleshtown, Sallins , Co.Kildare. The Board will note that this is the third application for such filling, the previous two having both been refused by the Planning Authority, and the last application refused on appeal to the Board.
- 7.1.2. The site is located in the countryside, approximately 2.3km to the north west of the town of Sallins and lies in very close proximity to the Grand Canal at Digby Bridge and Lock, Protected Structure. The development proposes to import from development sites within the central and north Kildare area, and especially from lands within the adjacent large growth towns of Newbridge and Naas. If permitted, imported material will be deposited at an even grade from the higher eastern side to the lower western areas of the site to improve the productivity due to poor drainage, and to provide an even surface to facilitate agricultural activities. A strip of land 6-12m in width adjacent to the stream on the western side of the site will be maintained and excluded from the fill area.

- 7.1.3. Access to the area to be filled will be over another agricultural field where it is proposed to construct a temporary road. The land reclamation works will be undertaken in 3 phases, beginning in the northern area of the site and moving in a southerly direction. The process will see the removal of the topsoil in Area 1 and its storage in Area 2 while Area 1 is being filled. The topsoil will then be reinstated in Area 1 once it has been filled. Topsoil from Area 2 will be removed and stored in Area 3 and once complete, the topsoil from Area 3 will be stored in Area 2 while Area 3 is being filled. On completion, it is submitted that the temporary road over the agricultural field will be removed and the land reinstated.
- 7.1.4. Access to the site will be over an existing lane which has served a commercial development in the past. The Board will note the planning history associated with this existing yard and the access laneway for which retention permission has been refused under PA ref. 13/491. I propose to deal with this issue further in this assessment below.
- 7.1.5. The Board will note the intended purpose of the filling of the site is stated as to improve the land for agricultural purposes. The site is located in the rural area and I note a number of similar proposals to fill and reclaim lands for agricultural purposes throughout the County. I also note the concerns and questions which arise as to the fact that the development amounts to a waste management facility during the period of the filling, in this case, between 3 and 5 years. In this regard, there is a commercial element to the proposal, beyond the primary purpose, which is to improve the quality and usability of agricultural lands. I also note that the applicant will be required to apply for a Waste Facility Permit from the County Council to import inert material to the site.
- 7.1.6. In principle, I have no objection to the intention of improving the quality of agricultural lands, through raising, grading and levelling as proposed. As such, I am satisfied that the proposed development can be considered acceptable in principle at this location. That said, there are potential issues arising in relation to flood risk, impacts on ecology, visual impacts, roads and traffic, impacts on protected structures and planning history.

## 7.2. Flood Risk Assessment

- 7.2.1. In support of the proposed development, the applicant submitted a Flood Risk Assessment and a Hydrogeological Assessment with the planning application. The purpose of these reports is to deal with issues relating to the potential risks associated with the filling of the site and the impacts on the flood regime and hydrogeology of the site. The subject site drains from the east towards the stream which flows along the western boundary of the site. This stream is a tributary of the River Liffey. The Grand Canal lies to the south of the site but is noted that there is no hydrological connection to the proposed development site.
- 7.2.2. The Hydrogeological Assessment submitted identifies that the soil under the site is well drained and shallow and that the bedrock under the majority of the site is expected to be over 10m deep and is of limestone, in an area mapped as a locally important karstified aquifer. Though the site is underlain at depth by karstified bedrock, there are no karst features identified on the site or in the surrounding area. The Assessment notes that the locality has a 'high' to 'moderate' groundwater vulnerability rating and concludes that the site is suitable for the importation of soil and stone to improve the land for agricultural purposes as there is a low to moderate risk to groundwater resources under the site.
- 7.2.3. Inland Fisheries Ireland made a submission in relation to the proposed development raising a number of issues which are required to be considered, and notably, that the development is located within the catchment of the River Liffey which is highly sensitive in terms of the species it supports. Topographical alteration has significant potential to cause the release of sediments and pollutants into the surrounding watercourses and recommendations in relation to stockpiling are detailed.
- 7.2.4. The FRA and the Hydrogeological Assessment reports submitted by the applicant note the location of the site and the presence of Flood Zones A, B and C on the site. It is noted that the OPW Flood Maps shows no historical flood events in the vicinity of the site and that watercourses in the area are not maintained by the OPW under an arterial drainage scheme and as such, the site is not within benefitting lands.
- 7.2.5. The Board will note its previous decision relating to a similar development on this site under PL09.246641, whereby the Board refused permission for the following stated reason:

Having regard to the nature of the proposed development, that is, the raising of lands by means of filling with inert materials, and its location in an area identified by the Office of Public Works as being at risk of pluvial flooding, the Board is not satisfied on the basis of the information provided, that the proposed development would not cause or exacerbate flooding on adjoining lands contrary to national flood guidelines. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

In terms of the above, it is noted that the preliminary Flood Risk Area maps would indicate that the site is not at risk of fluvial flooding but is at risk of pluvial flooding. The area at risk of pluvial flooding extends northwest and west of the site, following the route of the surface watercourse in this area.

7.2.6. The proposed works seek to improve the quality and productivity of agricultural lands which are considered a 'less vulnerable' use in terms of FRA. The submitted FRA identifies a number of mitigation measures including as follows:

- Infilling only to take place on parts of the site where the existing ground level is above 76.3mOD
- Infilling only to take place within part of the site designated as Flood Risk Zone C
- Permeable material to be used for car parking spaces, turning areas and other areas as appropriate
- Minimise compaction of deposited fill material in order to promote infiltration
- Establish vegetation on final surface in a phased manner in order to (i) quickly establish rooting thereby preventing sediment mobilisation, and (ii) to restrict development of preferential surface flow routes.
- Maintain open drains and watercourses in the immediate vicinity of the site. Whilst drain maintenance is important it is unlikely to improve flow rates in the area due to the very low hydraulic gradients.

7.2.7. I accept that the development has been designed in order not to increase flood risk. In terms of the justification test criteria of the FRM Guidelines, the following is relevant:

1. The subject lands have been zoned or otherwise designated for the particular use or form of development in an operational plan, which has been adopted or varied taking account of these guidelines:

The subject site is not zoned, being located in the open countryside area of Co. of Kildare. It is notable that the proposed development is sought in order to improve the quality of agricultural lands and as such, given that the site is located in the countryside, I am satisfied that the subject site might be reasonably considered to be appropriately designated for use proposed.

2. The development has been subject to an appropriate flood risk assessment that demonstrates:
  - (i) The development proposal will not increase flood risk elsewhere and, if practicable, will reduce overall flood risk:
  - (ii) The development proposal includes measures to minimise flood risk to people, property, the economy and the environment as far as reasonably possible;
  - (iii) The development proposed includes measures to ensure that residual risks to the area and/or development can be managed to an acceptable level as regards the adequacy of existing flood protection measures or the design, implementation and funding of any future flood risk management and provisions for emergency services access;  
and
  - (iv) The development proposed addresses the above in a manner that is also compatible with the achievement of wider planning objectives in relation to development of good urban design and vibrant and active streetscapes.

7.2.8. In terms of a consideration of part 2 of the JT Criteria, I would accept that the FRA, has presented mitigation measures which, if adhered to, will ensure that the proposed works will not remove any potential flood plain storage and that the development will not have a negative impact in this regard. The Hydrogeological Assessment also concludes advising that adherence with the recommendations of the submitted FRA, the proposed development will not have a negative impact on the local drainage network, on local private property or to the surrounding

environment and human health. As such, I am satisfied that the development, if permitted, will not exacerbate or add to flooding risk in the area.

### 7.3. Ecological Impacts

7.3.1. In support of the proposed development, the applicant has provided an Ecological Impact Assessment (EclA). The report dated 27<sup>th</sup> June 2019, was prepared by Flynn Furney, Environmental Consultants following two site visits in May and June of 2019. The purpose of the EclA is to provide a description of potential ecological impacts arising from the proposed development and the report provides a description of the proposed works and outlines the objectives of the EclA. The EclA notes that the subject site does not lie within any designated lands but notes that the boundary of the Grant Canal, pNHA, Site Code 02104, is located within 30m of the site. The Grand Canal pNHA is noted as a man-made waterway which includes the canal channel and its banks and is an important ecological corridor with regard to habitats, flora and fauna.

#### Habitats:

7.3.2. The subject site slopes downwards from the east to the west / south western area of the site where the on-site habitat is dominated by a wet marsh area. To the south eastern area of the site, the EclA notes the presence of locally important ‘stepping-stone’ woodland habitat and states that this area will not be impacted upon by the proposed development. In terms of potential survey constraints, the EclA notes that there were none and all identified habitats are fully described. The primary habitats identified on the site are as follows:

Habitat Type	Code	Area / location
Improved Agricultural Grassland	GA1	Higher / drier areas to north and eastern area of the site
Wet Grassland	GS4	Central spine and to the western area of the site
Marsh	GM1	The wettest area of the site to the south west corner area of the site

Hedgerows & Treelines	WL1 and WL2	Forms much of the boundaries of the site, particularly to the north west and south.  Identified as being a significant commuting / foraging route for numerous groups of fauna, as well as providing potential roosting / nesting / setts / dens etc.
Scrub	WS1	Towards the southern end of the site, in the marsh area. In the absence of management and / or changes in the hydrological regime, woodland will become established.
Drainage Ditches	FW4	A watercourse, comprised of 2 drainage ditches separated by a very narrow bank of earth runs along the western side of the site, providing suitable habitat for common frog and smooth newt. Neither ditch is considered suitable for white-clawed crayfish.

7.3.3. In terms of impacts associated with the proposed development on habitats, the EclA concludes that there are no impacts arising in relation to the Grand Canal and it is predicted that the overall significance of impacts is negligible to minor adverse. The impacts will be confined to the immediate site and will be of a short-term duration. The EclA notes that of the on site habitats, the development will result in the permanent loss of the area of Improved Agricultural Grassland (GA1) and most of the Wet Grassland (GS4). In terms of the habitat map submitted, the Board will note that it does not appear to reflect the proposal to set back the filling from the adjoining watercourse, which would result in the retention of part of the GS4 habitat.

7.3.4. In addition to the loss of the above habitats, a potential significant impact arising in terms of habitats relate to the potential for the introduction of invasive species to the site via importation of soil for the purposes of the landfill. In order to mitigate any such introduction, the applicant proposes to undertake control measures to ensure no invasive species, such as Japanese Knotweed, are introduced onto the site

during the landfilling. An Ecologist is also to be engaged to draw up a management plan for the site. The Board will also not the submission of the DoCHG in this regard.

#### Fauna:

- 7.3.5. In terms of mammals and species the EclA noted that 3 bat species were detected on the site during an hour-long survey including Leisler's bat, common pipistrelle and soprano pipistrelle. A fourth species, Daubenton's bat was recorded at the Grand Canal, but not at the watercourse along the western side of the site. Rabbit presence was identified along the eastern boundary of the site and a former badger sett was also noted. There is no further evidence of badger presence on the site, however. The EclA notes that due to the proximity of the Grand Canal and watercourses, there is a possibility that otter is present, although no evidence was found during the surveys.
- 7.3.6. With regard to breeding birds, it is submitted that no 'red-listed' birds were noted as occurring on the site. Four species of Amber status were identified with the remaining species being 'green status'.
- 7.3.7. In terms of bats, the EclA notes that the greatest level of bat activity was detected over the marsh area of the site and at the transitional woodland located between the site and the Grand Canal. The existing trees located to the north eastern area of the site were also identified as having features which may be used by bats for roosting. The proposed development does not propose to impact on the marsh area and as the trees, hedgerows and treelines are to be retained with no buildings to be demolished on the site, it is concluded that there will be no impact on the local bat population predicted.

#### Trees:

- 7.3.8. In terms of the Tree Assessment, Appendix A of the EclA, it is submitted that the purpose of the survey was to identify, classify and catalogue the trees occurring within an area potentially affected by the construction of an access route and the development itself. The species in the hedgerows and treelines are noted and identified as is the area of woodland immediately to the south of the site. The report concludes that the trees should be retained as they are locally important ecological features with some displaying features that could potentially host bats.

Having regard to the proposed development, the Board will note the intention to retain the trees and hedgerows as part of the proposed development.

Conclusion:

- 7.3.9. Overall, the EclA concludes that no significant negative impacts on habitats or protected species are predicted and that the development, singly or in conjunction with other development in the area will not impact negatively on any site of national or international importance. I am further satisfied that the applicant has considered the potential impacts arising due to the introduction of invasive species. Having regard to the information on file, I would generally concur with this assessment and conclusion. Should the Board be minded to grant planning permission in this instance, the mitigation measures indicated should be fully conditioned.

**7.4. Visual Impacts**

- 7.4.1. The subject site lies within the Northern Lowlands landscape character area as defined in the Kildare County Development Plan, Map 14.1 refers. This landscape is classified a Class 1, low sensitivity landscape which are areas 'with the capacity to generally accommodate a wide range of uses without significant adverse effects on the appearance or character of the area'.
- 7.4.2. In addition to the above, Section 14.5.4 of the Plan deals with the Grand and Royal Canal Corridors noting that 'development can have a disproportionate visual impact along the water corridor and can prove difficult for the existing topography, to visually absorb development'. Section 14.6 dealing with Scenic Routes and Protected Views, including 14.6.1 which relates to views to and from the county's waterways: Grand Canal, Royal Canal, River Liffey, River Barrow and the Rye Water River, and noting that 'river floodplains and canal banks are generally sensitive to development to varying degrees. Both the rivers and the canal corridors provide a contrast of form and colour on the landscape'. The site is located within an area designated as an Area of High Amenity associated with the Grand Canal. Table 14.9 of the Plan lists views to and from bridges on the Grand Canal including Digby Bridge, ref. GC5. There are no designated scenic routes in the vicinity of the site.
- 7.4.3. Having undertaken site visits in both December and January, I would not consider that the development, if permitted would be visible from any public roads in the

vicinity, including from Digby Bridge. The site itself is set back from the public road and is detached from the Grand Canal tow-path by two hedgerows which provides adequate screening, even in the winter months. While I would acknowledge that there may be spots along the tow-path where views into the site may be achievable, I would not consider that the visual impacts are significant or would be significant in the long term.

- 7.4.4. In terms of potential impacts on Protected Structures, Digby Bridge and associated Lock 16 at the Grand Canal to the south of the subject site is identified on the list of Protected Structures in the Kildare County Development Plan, ref. B14-46. The Bridge is also included in the National Inventory of Architectural Heritage (NIAH), ref. 11901403, where it is listed as being of architectural, historical, social and technical categories of special interest and rated as being of regional importance. The bridge is described as:

Single-arch dressed stone hump back road bridge over canal, dated 1794, with dressed stone voussoirs and dressed stone parapet walls. Coursed dressed stone walls to abutments. Cut-stone piers. Coursed dressed stone parapet walls. Cut-stone date stone/plaque. Cut-stone coping. Single segmental arch. Dressed stone voussoirs. Brick soffits having square apertures under. Sited spanning Grand Canal with grass banks to canal. Canal lock, c.1795, to north-west comprising sections of granite ashlar retaining walls with timber lock gates over.

Appraisal:

Digby Bridge (and Lock) is a fine stone bridge that forms an imposing feature on the Grand Canal and is one of a group of bridges on the section of that canal that passes through County Kildare. The construction of the arch that has retained its original shape is of technical and engineering merit. The bridge (and sections of canal retaining walls) exhibits good quality stone masonry and fine, crisp joints. The bridge and lock group is of considerable historical and social significance as a reminder of the canal network development in Ireland, which brought about many technical advances and encouraged the development of commercial activity in the late eighteenth century.

- 7.4.5. I have considered the proposed development in terms of the potential visual impact on the protected structure above. I am satisfied that if permitted, the development would not have any significant adverse impacts on the setting of this protected structure. I do note however, the concerns of the PA regarding potential structural impacts on the local road network related to HGV traffic generated by the development, including Digby Bridge. I propose to consider this issue further below under Section 7.5 Roads and Traffic.
- 7.4.6. In support of the proposed development, the applicant submitted a Land Reclamation Report which includes drawings presenting a topographical survey and assessment of the land. The Report notes that there is an area of approximately 3.23ha of undulating ground with a large portion which is unproductive due to poor drainage. The land was surveyed to produce contours of the proposed fill area, to aid in determining the volume of material required to raise the land and to provide an even surface to facilitate agricultural activities.
- 7.4.7. The report also includes details of the volume of material to be imported, the number of truck movements associated with the volume and the phasing of the works. The report also considers the effects of the works on drainage and presents details of operational matters. It is concluded that the work proposed will provide a significant improvement to the production capabilities of the agricultural land and is unlikely to have any adverse effects on drainage or flood risk.
- 7.4.8. In the context of visual impacts associated with the proposed development, I refer the Board to the Sections Drawing 5 submitted with the application. This drawing represents the existing and proposed ground levels associated with the site and following the completion of the development. It appears from the section drawings that there is an intention to fill right up to the 76.3mOD line which will result in a drop down of between approximately 0.5-1.3m. This 'elevation' would address the watercourse to the west of the site and would potentially be visible from the Grand Canal tow-path. The ground should be suitably graded across the fill site area to eliminate the creation of any such edge in order to minimise any visual impacts.
- 7.4.9. On completion of the filling of the site, I am generally satisfied that the development will have no visual impacts on the landscape in this area subject to compliance with

conditions which require that the edges of the filled area are sloped and graded across the fill area to provide for a smooth transition from the filled area of the site.

## 7.5. Roads & Traffic

- 7.5.1. The Board will note that the PA refused planning permission for the proposed development for three stated reasons, including one which relates to roads and traffic impacts. Indeed, the Executive Engineer, and SEE, of the Transportation Department of Kildare Co. Council has considered that ‘the local road is a narrow road, approximately 4.5m wide and is not suitable for 8 wheel rigid tipper HGVs as it would constitute a traffic safety hazard. The volume of HGVs would potentially lead to a structural deterioration of this local road’. The report recommends refusal of permission.
- 7.5.2. The site is to be accessed over the local road network including the L-2004 and ultimately over the existing access laneway which was constructed to serve the Dolly Skip Hire site. It is estimated that the development will result in approximately 2,500 truck movements occurring over a 3-5 year period. This will result in 10-16 truck movements per week into and out of the site associated with the proposed development. No information has been provided with regard to the existing use of the access laneway.
- 7.5.3. In terms of the planning history of the site, I note that the previous inspector considered that

‘with regard to (i) potential cumulative impacts; (ii) limited sight distances at the existing entrance; (iii) the presence of a junction immediately across the road from the existing entrance and (iv) the lack of traffic impact analysis or traffic management proposals, I am not satisfied that the traffic generated by the development would not result in a traffic hazard.’

In terms of the overall decision, I note that ‘the Board did not share the Inspector’s concerns regarding traffic or the effect of same on local roads having regard to the low level of traffic associated with the PD and considered that the issue of a preferred route to the site could be addressed by way of condition.’

As such, I am satisfied that the issue of roads and traffic impact has been appropriately considered and concluded as not being an issue in principle.

7.5.4. However, the Board will note that the Planning Authority has considered that the proposed development depends on using the existing access road, which it considers is an unauthorised development. Indeed, the third reason for refusal cited by the Planning Authority states as follows:

3. Access to the site is proposed via a temporary road connecting to an existing entrance, laneway and yard permitted under ref. ref. 06/2713, condition no. 2 of which required the removal of all commercial development and reinstatement of that site to domestic use within five years i.e. 2013. The proposed development would therefore be facilitated by an unauthorised development accordingly would be contrary to the proper planning and sustainable development of the area.

7.5.5. Having considered the planning history of the site, I am inclined to agree with the Planning Authority in this regard. Also, having undertaken a site inspection, it is clear that the yard area remains in non-domestic use, with the access road and electronic gates in place, and without the benefit of planning permission since at least 2013. While the description of the current proposed development seeks 'the use of an existing entrance and driveway in connection with this development', I would concur that there is no current valid planning permission for this entrance and driveway and therefore, would agree that a grant of permission for the development as proposed, would be facilitated by an unauthorised development and would be contrary to the proper planning and sustainable development of the area.

7.5.6. Should the Board not agree, I would recommend that a condition be included that the entrance and driveway be removed, and the land reinstated in accordance with condition 3 of permission PA ref 06/2713, on completion of the filling of the site.

## 7.6. **Other Issues**

### 7.6.1. **Residential Amenity Issues**

The Board will note that the subject site is located within a rural area with limited residential development, other than a line of residential properties to the east, including the applicants' home and the Digby Lock Cottage to the south east. There is no residential property directly abutting the subject site. As such, I would consider that there is limited potential to impact on residential amenities in the area. In order

to address any potential impacts however, the applicant submitted a Noise Impact Study and a Report on Proposed Mitigation of Wind-Blown Dust from Site Works.

With regard to the Noise Impact Study, the report provides an appraisal of potential noise impacts associated with the proposed development and modelling includes the contribution of traffic noise and cumulative noise levels during the construction and operational phases of the development. The report includes mitigation measures and concludes that noise associated with the development will be below the likely noise limits which will form part of the waste facility permit conditions. No residual impacts are predicted.

In terms of the Report on Proposed Mitigation of Wind-Blown Dust from Site Works, the purpose of this report is to assess the impact of the proposed development on dust emissions to the receiving environment and propose mitigation measures for same. In this regard a baseline dust assessment was conducted using 4 monitoring locations. Samples collected were tested with results presented in Table 2.2 of the report. The sources of likely to impact on air quality are detailed in Section 3 of the report which also includes traffic management and dust generation control measures as well as operation management and dust control measures.

Overall, and having regard to the 3-5 year life of the development, the nature of the material to be deposited on the site and the distance between the site and residential properties, I am generally satisfied that the development will not give rise to significant adverse impacts on existing residential amenities.

#### 7.6.2. **Development Contribution**

The subject development is liable to pay development contribution, a condition to this effect should be included in any grant of planning permission.

Kildare County Council, by resolution on the 5<sup>th</sup> of November, 2015, made the Development Contribution Scheme 2015-2022 in order to comply with the requirements of the Planning & Development Act, 2000 (as amended).

Section 8 of the Scheme identifies the level of general contributions and includes as follows:

(viii) Waste Recovery Facility including the deposition of soil / stones on Lands \*

Contributions will be applied at €15,000 per hectare or part thereof.  
(\*Classification of a recovery facility as per First Schedule of Waste Management Permit Regulations SI No.165)

(ix) Landfill Domestic Houses

Development Contributions will apply to all landfill, including landfill required for raising a site for construction of a dwelling. The rate applied for the landfill element (A) of the development shall be €15,000 per hectare or part thereof. The rate applied for the dwelling (B) shall be in addition to that for the landfill and shall be applied in accordance with this Scheme. The contribution levied (landfill + dwelling) shall be equal to (A) or (B), whichever is the greater.

Section 12 of the Scheme deals with Exemptions and Reduced Contributions and includes:

g) Change of Use

This scheme provides for waivers in the case of Change of Use planning permissions. Kildare County Council will grant a 100% reduction in contribution charges where the development does not lead to the need for new or upgraded infrastructure/services or significant intensification of demand placed on existing infrastructure.

Having regard to the information presented in support of the proposed development, I am satisfied that the nature of the development proposed clearly falls within the category of (viii) Waste Recovery Facility including the deposition of soil / stones on Lands as provided for in Section 8 of the Kildare County Council Development Contribution Scheme 2015-2022. As such, I am satisfied that a contribution of €15,000 per hectare or part thereof is applicable.

## 7.7. **Appropriate Assessment**

The site is not located within any designated site. The closest Natura 2000 site is the Ballynagagh Bog SAC (Site Code: 000391) and the Ballynagagh Lake SAC (Site Code 001387, both located approximately 5km to the north west of the site. Mouds Bog SAC (Site Code: 002331) is located approximately 7.5km to the south west of

the site. The Grant Canal pNHA, (Site Code 002104), is located adjacent to the subject site, and within 30m.

Overall, I consider it is reasonable to conclude on the basis of the information available that the proposal individually or in combination with other plans or projects, would not adversely affect the integrity of a Natura 2000 site having regard to the nature and scale of the proposed development and separation distances involved to adjoining Natura 2000 sites. It is also not considered that the development would be likely to have a significant effect individually or in combination with other plans or projects on a European Site.

## **8.0 Recommendation**

I recommend that planning permission be refused for the proposed development for the following stated reason.

## **9.0 Reasons and Considerations**

1. On the basis of the submissions made in connection with the planning application and appeal, it appears to the Board that the proposed development depends on a structure which is unauthorised, being the entrance and laneway permitted under PA ref. 06/2713, and condition no. 2 of which required the removal of all commercial development, including the entrance and laneway, and reinstatement of that site to domestic use within five years i.e. by 2013. As such, the Board considers that the proposed development would comprise the extension and continued use of this unauthorised structure. Accordingly, it is considered that it would be inappropriate for the Board to consider the grant of a permission for the proposed development in such circumstances.

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A. Considine  
Planning Inspector  
30<sup>th</sup> January, 2020