

An
Bord
Pleanála

Board Order
ABP-310113-21

Planning and Development Acts 2000 to 2021

Planning Authority: Kerry County Council

Planning Register Reference Number: 20/323

Appeal by Patrick Heslin of Drumgowna, Mohill, County Leitrim against the decision made on the 6th day of April, 2021 by Kerry County Council to grant subject to conditions a permission to Ger Naughton and Sons Limited care of Reeks Consulting Engineers of Rock Road, Killarney, County Kerry in accordance with plans and particulars lodged with the said Council:

Proposed Development: To fill land with inert waste along with associated site works, for the purpose of land reclamation. The development is a development related to an activity requiring an application for a waste permit. A Natura Impact Statement (NIS) has been submitted with this application, all at Nantinan, Killorglin, County Kerry, as revised by the further public notice received by the planning authority on the 11th day of February, 2021.

Decision

GRANT permission for the above proposed development in accordance with the said plans and particulars based on the reasons and considerations under and subject to the conditions set out below.

Matters Considered

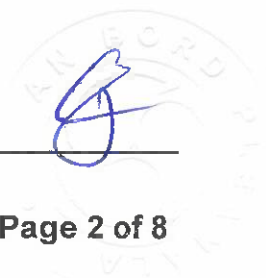
In making its decision, the Board had regard to those matters to which, by virtue of the Planning and Development Acts and Regulations made thereunder, it was required to have regard. Such matters included any submissions and observations received by it in accordance with statutory provisions.

Reasons and Considerations

Having regard to the policies and provisions of the Kerry County Development Plan 2015 - 2021, which seek to support the sustainable development of agriculture, and to the nature and scale of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development, which seeks to reclaim lands for agricultural use, would not seriously injure the amenities of the area, would not be likely to have significant effects on the environment or the ecology of the area 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.

Environmental Impact Assessment

The Board completed a screening determination of the proposed development and considered that the Environmental Impact Assessment Screening Report, submitted by the applicant, identifies and describes adequately the direct, indirect, secondary, and cumulative effects of the proposed development on the environment.



Having regard to: -

- the nature and scale of the proposed development, which is below the threshold in respect of 11(b) and 1(c) of Part 2 of Schedule 5 of the Planning and Development Regulations 2001, as amended;
- the location of the site outside of any sensitive location specified in article 109 of the Planning and Development Regulations 2001 (as amended);
- the guidance set out in the “Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development”, issued by the Department of the Environment, Heritage and Local Government (2003);
- the criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended); and
- the features and measures proposed by the applicant envisaged to avoid or prevent what might otherwise be significant effects on the environment, including measures identified in the Natura Impact Statement,

it is considered that the proposed development would not be likely to have significant effects on the environment and that the preparation and submission of an Environmental Impact Assessment Report would not, therefore, be required.

Appropriate Assessment: Stage 1:

The Board considered the Natura Impact Statement and all the other relevant submissions and carried out both an Appropriate Assessment screening exercise and an Appropriate Assessment in relation to the potential effects of the proposed development on designated European Sites. The Board agreed with and adopted the screening assessment carried out, and conclusions reached in the Inspector's report that Castlemaine Harbour Special Area of Conservation (Site Code 000343) and Castlemaine Harbour Special Protection Area (Site Code 004029) are the only European Sites in respect of which the proposed development has the potential to have a significant effect.

Appropriate Assessment: Stage 2:

The Board considered the Natura Impact Statement and associated documentation submitted with the application, the mitigation measures contained therein, the submissions and observations on file, and the Inspector's assessment. The Board completed an Appropriate Assessment of the implications of the proposed development for the aforementioned European Sites in view of the Sites' Conservation Objectives. The Board considered that the information before it was adequate to allow the carrying out of an Appropriate Assessment. In completing the Appropriate Assessment, the Board considered, in particular, the following:

- (i) the likely direct and indirect impacts arising from the proposed development both individually and in combination with other plans or project;
- (ii) the mitigation measures which are included as part of the current proposal; and

- (iii) the Conservation Objectives for the European Sites.

In completing the Appropriate Assessment, the Board accepted and adopted the Appropriate Assessment carried out in the Inspector's report in respect of the potential effects of the proposed development on the aforementioned European Sites, having regard to the Sites' Conservation Objectives.

In overall conclusion, the Board was satisfied that the proposed development, by itself or in combination with other plans or projects, would not adversely affect the integrity of the European Sites, in view of the Sites' Conservation Objectives.

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 23rd day of September 2020 and the 22nd day of January 2021, 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. All of the environmental and construction mitigation measures, as set out in the EIA Screening Report and the Natura Impact Statement received by the planning authority on the 6th April 2020, as amended by the details submitted on the 23rd day of September 2021 and 22nd January 2021, shall be implemented by the developer, except as may otherwise be required in order to comply with the conditions of this Order.

Reason: In the interests of clarity and of the protection of the environment during the construction and operational phases of the development.

3. The proposed development shall be amended as follows:
 - (a) The total quantity of waste accepted at the facility shall not exceed 25,000 tonnes and shall be focussed within phases 2-6 of the site.

Revised drawings (site layout plan and site section drawings) showing compliance with these requirements shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.

Reason: In the interests of visual and residential amenity.

4. A 10 metre buffer zone shall be provided to the western and southern boundaries of the site. All trees and hedgerows on the boundaries of the site shall be retained and maintained with the exception of those necessary to breach to provide for the proposed entrance. Protective fencing/berms shall be instated prior to commencement of infilling operations.

Reason: To prevent water pollution and in the interest of residential and environmental amenity.

5. (a) Prior to commencement of development, a system of advanced warning signs shall be erected along the public road in the vicinity of the site which shall be agreed in writing with the planning authority.
- (b) The public roadway shall be kept clean and tidy at all stages of the development.

Reason: In the interest of traffic safety.

6. The final use of the lands after the completion of the importation of materials shall be for agricultural purposes only.

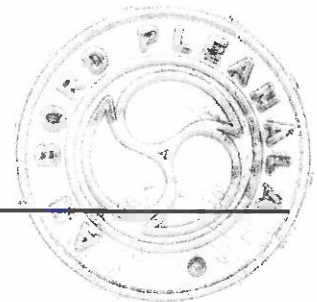
Reason: In the interest of clarity.

7. The developer shall pay to the planning authority a financial contribution 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 the 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. Details of the application of the terms of the Scheme 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 the proper application of the terms of the Scheme.

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.



John Connolly
Member of An Bord Pleanála
duly authorised to authenticate
the seal of the Board.



Dated this 25th day of APRIL 2022.