

An  
Bord  
Pleanála

Board Order  
ABP-311269-21

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**Planning and Development Acts 2000 to 2021**

**Planning Authority: Kerry County Council**

**Planning Register Reference Number: 20/1107 (Killarney)**

**Appeal** by Michael J. Horgan of 2 Upper Cloonbeg, Tralee, County Kerry against the decision made on the 9<sup>th</sup> day of August, 2021 by Kerry County Council to grant subject to conditions a permission to John Joe Murphy care of KPH Construction of Unit 1, Gornamullen Business Park, Kenmare, County Kerry in accordance with plans and particulars lodged with the said Council:

**Proposed Development:** Importation of inert materials and associated works over an area of 0.74 hectares for the purpose of land reclamation for agricultural purposes. The average depth of fill will be 1.5 metres over existing ground levels, at Shronedarragh, Barraduff, Killarney, County Kerry. This development comprises an activity which will be subject to an application for a waste facility permit. The proposed development was revised by further public notices received by the planning authority on the 6th day of April, 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, which seek to support the sustainable development of agriculture and to the nature and scale of the development proposed, 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.

### **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 Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment Special Area of Conservation (Site code: 000365) is the only European Site 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 Site in view of the site's 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 or in combination with other plans or projects,
- (ii) the mitigation measures which are included as part of the current proposal, and

(iii) the Conservation Objectives for the European Site.

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 Site, having regard to the site's 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 Site, in view of the site's 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 16<sup>th</sup> day of March 2021 and the 15<sup>th</sup> day of June 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 Environment and Traffic Safety Booklets received by the planning authority on the 16<sup>th</sup> day of March 2021, and the Natura Impact Statement received by the planning authority on the 16<sup>th</sup> day of March 2021, as amended by the details submitted on the 15<sup>th</sup> day of June 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 importation of soil and operation of associated machinery shall be carried out only between the hours 0900 and 1600 from Mondays to Fridays inclusive. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

**Reason:** In the interest of good traffic management and to protect amenities of the area.

4. (a) Prior to commencement of development, a system of advanced warning signs shall be erected along the access road to the site. Details in this regard shall be submitted to and agreed in writing with the planning authority prior to commencement of development.
- (b) The public roadway shall be kept clean and tidy at all stages of the development.

**Reason:** In the interest of traffic safety.

5. 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 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.

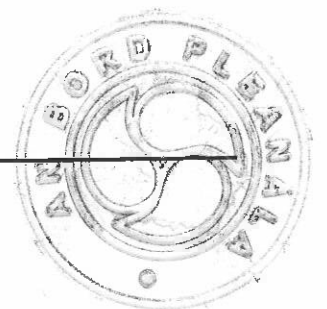
**Reason:** It is a requirement of the Planning and Development Act 2000, as amended, that a condition requiring a contribution in accordance with the Development Contribution Scheme made under section 48 of the Act be applied to the permission.

*Dr. Maria FitzGerald*

**Maria FitzGerald**

**Member of An Bord Pleanála**

**duly authorised to authenticate  
the seal of the Board.**



Dated this 24<sup>th</sup> day of Jan. 2022.