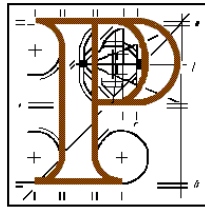


An Bord Pleanála



Inspector's Report

PL01.246282

DEVELOPMENT:- Import stones and soil to use them to restore an exhausted sand and gravel pit to agricultural use located on lands at Powerstown, Co. Carlow.

PLANNING APPLICATION

Planning Authority: Carlow County Council

Planning Authority Reg. No: 15/377

Applicant: Patrick Hanlon

Application Type: Permission

Planning Authority Decision: Refuse

APPEAL

Appellant: Patrick Hanlon

Type of Appeal: 1st-V-Grant

DATE OF SITE INSPECTION: 19th May 2016

Inspector: Colin McBride

1. SITE DESCRIPTION

- 1.1 The appeal site, which has a stated area of 0.67 hectares, is located to approximately 10k to the south of Carlow Town in the townland of Powerstown. The site is located a short distance south of the M9 and is located on the western side of the R448. The site is occupied by a disused sand and gravel pit and is accessed through an existing agricultural access that serves the adjoining agricultural lands at this location. The sand and gravel pit has not been active in a considerable period of time. Adjoining lands are agricultural in nature (grazing) and fall in a westerly direction towards the River Barrow, which is located appropriately 190m west of the site. The nearest dwelling to the site is located just north of the vehicular entrance and is a single-storey dwelling. The public road serving the site is 7.5m wide with hard shoulders along each side. Just offset (south) from the entrance to the site on the opposite side of the R448 is a public road serving an existing landfill located to the east of the site.

2. PROPOSED DEVELOPMENT

- 2.1 Permission is sought for to import stones and soil for use to restore exhausted sand and gravel pit for agricultural use. The proposal entails the importation of 12,000 to 15,000 cubic metres of material to be inert stones and soil. It is noted that the ongoing operation will be determined by the availability of suitable restoration material so activity may be intermittent depending on availability of material. A 12 year permission is sought.

3. LOCAL AND EXTERNAL AUTHORITY REPORTS

- 3.1
- (a) Roads (07/01/16): No objection subject to removal of shrubbery to the south of the site to improve sightlines.
 - (b) EPA (07/02/26): It is not possible to determine whether the activity proposed requires a waste licence, the applicant should be advised to apply to the local authority for a determination on the authorisation required for this activity. It is noted that an EIS did not accompany the application, it is noted that where a determination is being made on whether an EIS is required the planning authority should deliberate with the EPA in the case of activities that require a waste licence. It is advised that if a waste licence is required, consultation on the planning application, licence application and EIS must be carried out in accordance with the EU (Environmental Impact Assessment)(Waste) Regulations 2012 (S.I. No. 283 of 2012).

- (c) Area Engineer (12/01/16): The land is part of the flood plain of the River Barrow and should not be filled in.
- (d) Inland Fisheries Ireland (18/01/16): The proximity to the River Barrow is noted with concerns regarding the potential for discharge of suspended solids to the aquatic environment, further information is required in this regard.
- (e) Irish Water (22/01/16): No objection.
- (f) Environment (25/01/16): The site is located within the River Barrow and River Nore SAC and therefore a Stage 2 Appropriate Assessment is required.
- (c) Planning report (17/02/16): Concerns expressed regarding the appropriate assessment and the location of the site within a designated SAC with it noted that it is considered that the proposed development would be contrary to the policy of the Planning Authority (Heritage – Policy 2) and the proposal has the potential to adversely affect the integrity of the Natura 2000 site. It is noted that the proposal does not provide adequate assessment of the impact of the development in the floodplain of the River Barrow and the proposal would be contrary Development Plan policy that seeks to ensure floodplains are retained for their biodiversity and flood protection value. The report also question whether the proposal requires sub-threshold Environmental Impact Assessment. Refusal was recommended based on the reasons outlined below.

4. DECISION OF THE PLANNING AUTHORITY

4.1 Permission refused based on the following reasons.

1. The proposed development by virtue of its location within a candidate Special Area of Conservation (002162) the River Barrow, would constitute and inappropriate development which has the potential to give rise to significant adverse direct, indirect or secondary effects on the integrity of the cSAC together with the qualifying interests and conservation objectives relating to this designated area. The proposed development would therefore be contrary to the policy (Heritage – Policy 2) of the Carlow County Development Plan 2015-2021 which seeks to *“protect and maintain the favourable conservation status and conservation value of all natural heritage sites designated or proposed for designated in accordance with European and National legislation...and to promote the maintenance and as appropriate the achievement of favourable conservation status of protected habitats and species”*. To permit the proposed development would therefore be contrary to Article 6(3) of the Habitats Directive, the provisions of the Carlow County Development Plan 2015-2021 and as such would be contrary to the proper planning and sustainable development of the area.

2. The proposed development, by virtue of its location within the Flood Plain of the River Barrow, would be contrary to the provisions (Heritage – Objective 4) of the Carlow County Development Plan 2015-2021 which seeks “to ensure that floodplains and wetlands within the plan area are retained for their biodiversity and flood protection value”. The proposed development by virtue of filling of the site could give rise to displacement of flood waters potentially impacting on the amenities of adjoining properties and the ecological integrity of the area. The proposed development with the potential risk of contamination of the River Barrow would be prejudicial to public health with associated environmental impacts and would therefore, be contrary to the proper planning and sustainable development of the area.

5. PLANNING HISTORY

5.1 No planning history on appeal site.

5.2 P1: .6220: Permission sought for extension of dwelling and septic tanks at the dwelling located to the north of the site.

6. PLANNING POLICY

6.1 The relevant plan is the Carlow County Development Plan 2015-2021.

7. GROUNDS OF APPEAL

7.1 A first party appeal has been lodged by EssGee Consultants on behalf of Patrick Hanlon, Rathwade, Bagnelstown, Co. Carlow. The grounds of appeal are as follows...

- The applicant/appellant has included a Stage 1/Stage 2 Appropriate Assessment report to the address the issues raised by the Planning Report and the submissions by Inland Fisheries Ireland.
- The material to be used to restore the sand and gravel pit is subsoil and topsoil imported from greenfield construction sites under a process regulated by the EPA under Article 27 of the Waste Regulations. This is generated as a by-product of the site and Article 27 allows and economic operator to decide under certain circumstances that a material is by-product and not a waste. Such decisions are to be notified to the EPA and the Agency is required to maintain a register of these decisions.
- It is noted that the material to be imported under the provisions of Article 27 is naturally occurring and is inert and has no adverse impact on human health or the environment. It is noted that the proposed development either individually

or in combination with other plans and projects, will not adversely affect the ecological integrity or a Natura 2000 site in accordance with Article 6(3) or the Habitats Directive.

- The applicant/appellant questions the status of the site in regards to the floodplain of the River Barrow. It is noted that the internal reports are conflicting regarding the status of the site regarding flood risk. It is noted that flooding mapping published by the OPW and the South East CFRAM study indicate that site is not within an area affected by flooding from the River Barrow and therefore not within the floodplain of the River Barrow. In this regard it is noted that reason no. 2 should not apply.

8. RESPONSES

8.1 Response by Carlow County Council

- Notwithstanding the grounds of appeal, the Local Authority remains of the view that the proposed development has the potential for significant environmental impacts.
- The Local Authority acknowledges the submission of a Stage 2 Appropriate Assessment.
- The Local Authority expresses concerns regarding the material to be used to fill the site and note that such can proceed in absence of an EPA assessment with concerns regarding the potential environmental impacts due to its sensitive location within an SAC and floodplain.
- It is noted that the appeal states that the site is not within the floodplain however the Stage 2 Appropriate Assessment states that the site is within a floodplain.

8.2 Response from An Taisce.

- The response concurs with the concerns raised by Carlow County Council with regard to the SAC and floodplain.

8.3 Response from Development Applications Unit.

- No archaeological objection to the proposal.

9. ASSESSMENT

9.1 Having inspected the site and examined the associated documentation, the following are the relevant issues in this appeal.

Principle of the proposed development

Appropriate Assessment
Flooding
Environmental Impact Assessment
Traffic
Other Issues

9.2 Principle of the proposed development:

9.2.1 Permission is sought to import stones and soil for use to restore exhausted sand and gravel pit for agricultural use. According to the information submitted the proposal entails the importation of 12,000 to 15,000 cubic metres of material to be inert stones and soil. It is noted that the ongoing operation will be determined by the availability of suitable restoration material so activity may be intermittent depending on availability of material. The information submitted indicates that a 12 year permission is sought. It is noted that material to be used will generally be imported from greenfield construction sites and will be subject to a notification to the EPA under Article 27 of the European Communities (Waste Directive) regulations 2011, S.I. No. 126 of 2011. In this case the material is classified as by-product and not as waste.

9.2.2 The purpose of the restoration is to use the land for agricultural purposes similar in nature to the adjoining lands. The site located in a rural area on unzoned lands. In terms of proposed land use, the use of the site for agricultural purposes is in keeping with existing land use at this location. I would consider that the principle of the proposed development is satisfactory subject to the proposal being satisfactory in regard to impact on the amenities of the area (visual amenity and adjoining amenity), satisfactory in regards to environmental impact, public health, flood risk issues, traffic safety and issues concerning appropriate assessment. These aspects of the proposal are to be assessed in the following sections of this report.

9.3 Appropriate Assessment:

9.3.1 The EU Habitats Directive (92/43/EEC) Article 6 (3) requires that "any plan or project not directly connected with or necessary to the management of the (European) Site, but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and, subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public". The Board as a competent authority "shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned". In this regard it is appropriate to carry out a stage 1

screening assessment and then if necessary a stage 2 appropriate assessment.

9.3.2 The applicant submitted a Stage 1 Screening report. This report outlined the nature of the proposal. The report focused on the River Barrow and River Nore SAC (site code 002162). The report outlined the qualifying interests and conservation objectives of the designated site. The report described the individual elements of the plan likely to give rise to effect on the designated site and the direct, indirect or secondary effects of the project on the designated site. It noted that the proposal entails no loss of habitat in relation to the designated site. It is noted that there will be no emissions to either surface or ground water. It is noted that there is potential for uncontrolled discharges or releases of sediment to affect the conservation status of the designated site. It is noted that the proposal is unlikely to have a significant effect due to the nature of the material being imported, the lack of surface water flow impacting the site and best practice measures to be implemented to prevent contamination of surface water during the development and operational phase. It was concluded the project either alone or in combination with other plans and projects will have no significant or adverse effect on the designated Natura 2000 site. It was concluded that a Stage 2 Appropriate Assessment was not required.

9.3.3 The appeal submission submitted a revised Stage 1 Screening Report with an altered conclusion that a Stage 2 Appropriate Assessment was required. This appears to be in response to the reason for refusal and the Local Authority report noting that a Stage 2 Appropriate Assessment was required. The assessment describes the elements of the project likely to give rise to significant effects on the site, sets out the conservation objectives of the site and a description of how the site will affect key species and habitats. The potential effects include reduction in water quality through release of silt/sediment to river or contamination from other chemical pollutants. The Stage 2 Assessment includes details of mitigation measures to avoid, reduce or remedy the adverse effects that are likely to result from the proposed development. The mitigation measures include controlled and supervised reinstatement works using only inert material and appropriate measures regarding refueling of machinery. There will be no run-off from the site and unlikely to be an increase in suspended solids with works to be carried out during dry periods. The ERFB and NPWS will be contacted before the start of construction and the correspondence with Inland Fisheries Ireland have been reviewed with the mitigation measures proposed to address the concerns regarding effect on water quality. It was concluded the project either alone or in combination with other plans and projects will have no significant or adverse effect on the designated Natura 2000 site.

9.3.4 The Stage 1 Screening Report and Stage 2 Appropriate Assessment Report are noted. In regards to Natura 2000 sites within the vicinity of the appeal, site, there is one such site within 15km and as set out in the reports submitted it is the River Barrow and River Nore SAC (site code 002162). The appeal site is located within the defined area of the SAC with the appeal site being approximately 190m to the west of the channel of the River Barrow itself. The qualifying interests of the site (attached) include a number of habitats and species including estuaries, mudflats, alluvial forests, freshwater pearl mussel, brook lamprey, river lamprey, Atlantic salmon (full list attached). The nature of the designated SAC is an aquatic environment and the good conservation status of such is dependent on maintaining and protecting water quality. As noted the site is within the boundary of the designated site and in this regard I would consider that the proposal is likely to have a significant effects on the the Natura 2000 site and that it is appropriate that the proposal is subject to a Stage 2 Appropriate Assessment. In terms of effects on habitats the appeal site would not result in the loss of any of the habitat types identified as qualifying interests despite being within the confines of the designated site. I would consider that the reports in relation to Appropriate Assessment correctly identify the potential effects of the proposal with such being discharge of suspended solids due to importation of material onto the site and excavations on site to restore the exhausted quarry. In addition there is potential for discharge of hydrocarbons associated with the machinery to be used on site to restore the exhausted quarry. Despite proposal for mitigation measures to prevent an adverse effect on the integrity of the designated Natura 2000 site, I would consider that the nature or the activity and its operation does pose a the risk of having significant and adverse effects at this location and would disagree with the conclusion of the Stage 2 Appropriate Assessment report. The proposal poses a significant risk of discharge of suspended solids to the adjoining watercourse due to its proximity to the watercourse and being within the drainage catchment of the watercourse in addition to being at a location where there is significant risk of flooding. The nature of the project provides for an activity that may be ongoing for significant period of time (12 years, due availability of material), and such poses an even greater risk of discharge of suspended solids as the activity will be intermittent and the site may go through periods where it is not being actively managed. I would consider that this poses an even greater risk in regards to the water quality within the designated Natura 2000 site due to the nature of the activity involved. I would consider that having regard to the nature, scale and characteristics of the proposed development, the proximity of the development to an adjoining watercourse (River Barrow) which forms part of the River Barrow and River Nore SAC (Site code: 002162), the proposal would pose an unacceptable risk of contamination of the adjoining watercourse and subsequently a deterioration of water quality and conservation status in the designated Special Area of Conservation. It is reasonable to conclude on the basis of the

information available that proposed development, individually and in combination with other plans and or projects would adversely affect the integrity of the River Barrow and River Nore SAC (Site code: 002162).

9.4 Flooding:

9.4.1 Permission was refused on the basis that “the proposed development, by virtue of its location within the Flood Plain of the River Barrow, would be contrary to the provisions (Heritage – Objective 4) of the Carlow County Development Plan 2015-2021 which seeks *“to ensure that floodplains and wetlands within the plan area are retained for their biodiversity and flood protection value”*. The proposed development by virtue of filling of the site could give rise to displacement of flood waters potentially impacting on the amenities of adjoining properties and the ecological integrity of the area. The proposed development with the potential risk of contamination of the River Barrow would be prejudicial to public health with associated environmental impacts and would therefore, be contrary to the proper planning and sustainable development of the area”. In response the appellant has contended that the site is not within the floodplain of the River Barrow and in such regard has provided a map from the South Eastern CFRAM Study to demonstrate this point.

9.4.2 Based on the flood mapping information, the appeal site is just outside of the area subject to flooding along the River Barrow. I would consider that the development on the appeal site is unlikely to exacerbate flooding issues or displace flood waters. Notwithstanding such I would consider that the most significant issue regarding flooding is the potential for contamination of surface water as outlined above in the previous section given the proximity of the site to the affected area and the nature of the activity on site.

9.5 Environmental Impact Assessment:

9.5.1 The Planning report raises concerns regarding the type of material to be imported on site and the status of the proposal in regards to Environmental Impact Assessment with it suggested that the development may require a sub-threshold Environmental Impact Statement. According to the information on file the proposal is for restoration of an exhausted sand and gravel quarry using inert soil and stones with it estimated that between 12,000 and 15,000 cubic metres of such material is to be imported. The applicant notes that the material is to come from greenfield construction sites and is to be classified as a by-product and not waste under Article 27 of the European Communities (Waste Directive) Regulations 2011, S.I. No. 126 of 2011. Based on the information on file the proposal is not intended or presented as a waste development and there appears to be is no intention of applying for a licence from the EPA (note EPA submission). No Environmental Impact Statement was submitted with the proposal.

9.5.2 In relation to the Schedule 5 (Development for the Purposes of Part 10), the proposed development is not a class of development that is subject to the requirement for Environmental Impact Assessment. In this regard an Environmental Impact Statement is not required (I would note that the EIS recommendation form attached to the file is not required).

9.6 Traffic:

9.6.1 The proposal entails use of an existing access off the R448. According to the information on file proposal entails the restoration of the exhausted quarry at this location using 12,000 to 15,000 cubic metres of inert stones and soil. There is little information regarding the type and frequency of traffic to be generated by the proposed development. It is noted that the activity on site is dependent on supply of material, which may not be periodic and that the applicant are requesting a 12 year permission. It is noted that sightlines of 215m are available in either direction at the vehicular access. The site is located at point where the road network is of a good standard and sightlines in each are satisfactory. Although there is no information regarding traffic levels, I would consider that the road network is of sufficient standard to cater for the level of traffic likely to be generated and the sightlines at the vehicular entrance area satisfactory to cater for the turning movements generated. I would consider that the proposals would be satisfactory in regards to traffic impact.

RECOMMENDATION

I recommend refusal of permission based on the following reasons.

REASONS AND CONSIDERATIONS

1. Having regard to the nature, scale and characteristics of the proposed development, the proximity of the development to an adjoining watercourse (River Barrow) which forms part of the River Barrow and River Nore SAC (Site code: 002162), the proposal would pose an unacceptable risk of contamination of the adjoining watercourse and subsequently a deterioration of water quality and conservation status in the designated Special Area of Conservation. It is reasonable to conclude on the basis of the information available that proposed development, individually and in combination with other plans and or projects would adversely affect the integrity of the River Barrow and River Nore SAC (Site code: 002162).

Colin McBride
24th May 2016